

**ONTARIO PUBLIC SERVICE
LABOUR RELATIONS TRIBUNAL
DECISIONS**

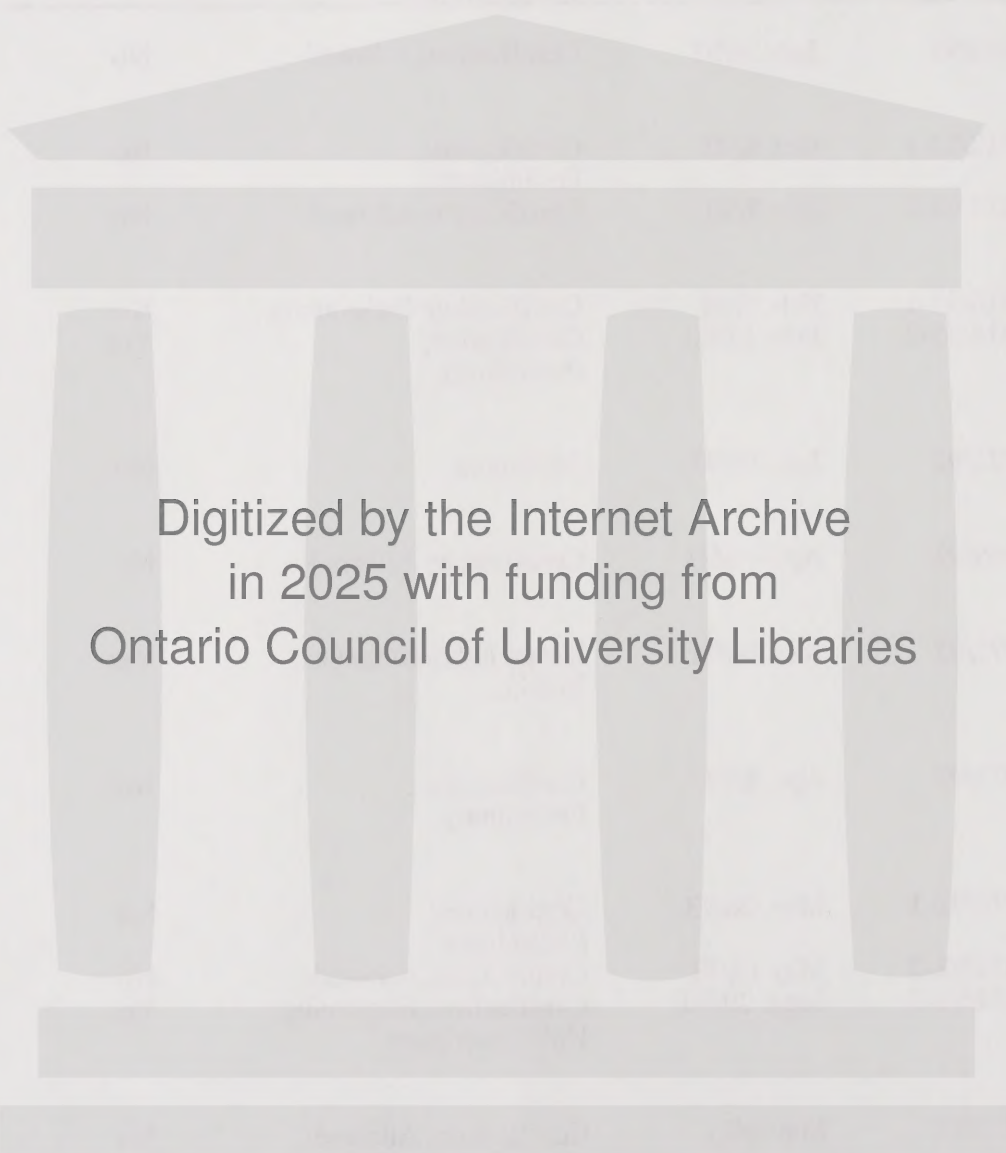
TRIBUNAL DECISIONS

1992 - 1993

ONTARIO PUBLIC SERVICE LABOUR RELATIONS TRIBUNAL DECISIONS

1992-1993

File No.	Date	Type and Disposition	Indexed
T/0011/92	Sept. 8/92	Certification; Allowed	No
T/0012/92-1	Oct. 6/92	Certification; Preliminary	No
T/0012/92-2	July 7/93	Certification; Allowed	No
T/0016/92-1	Feb. 9/93	Certification; Preliminary	No
T/0016/92-2	Feb. 17/93	Certification; Preliminary	Yes
T/0021/92	Jan. 19/93	Settlement	No
T/0069/92	Apr. 13/93	Certification; Allowed	No
T/0072/92	July 14/93	Unfair Labour Practice; Interim	Yes
T/0073/92	Apr. 8/93	Certification; Preliminary	No
T/0074/92-1	Mar. 26/93	Certification; Preliminary	No
T/0074/92-2	May 13/93	Certification; Allowed	No
T/0074/92-3	Sept. 29/93	Certification; Bargaining Unit Description	Yes
T/0075/92	May 6/93	Certification; Allowed	No
T/0076/92	July 6/93	Unfair Labour Practice; Preliminary	Yes
T/0094/92	Sept. 29/93	Unfair Labour Practice; Preliminary	Yes



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File No.	Date	Type and Disposition	Indexed
T/0005/93-1	May 12/93	Certification; Preliminary	No
T/0005/93-2	July 7/93	Certification; Allowed	No
T/0025/93	June 10/93	Employee Status; Preliminary	No
T/0027/93	Sept. 30/93	Unfair Labour Practice/ Duty of Fair Representation; Dismissed	Yes
T/0033/93	Sept. 29/93	Settlement	No



Ontario Public Service
**Labour
Relations
Tribunal**

Fonction publique de l'Ontario
**Tribunal administratif
des relations
de travail**

180 Dundas Street West, Suite 2100, Toronto, Ontario M5G 1Z8
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T/0011/92

IN THE MATTER OF AN APPLICATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

Ontario Public Service Employees Union

Applicant

- and -

The Crown in Right of Ontario
as represented by the Ministry of Health
and Amherstburg, Anderdon and Malden
Volunteer Ambulance Service

Respondent

BEFORE:

G. McKechnie
M. Sullivan
B. Gallivan

Vice-Chairperson
Member
Member

**FOR THE
APPLICANT:**

E. Ogibowski
Representative
Ontario Public Service Employees Union

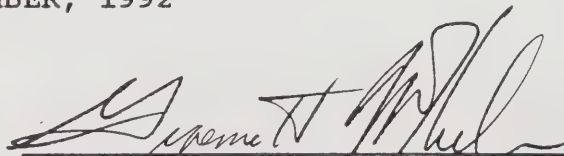
**FOR THE
RESPONDENT:**

C. Moore
President
Amherstburg, Anderdon and Malden
Volunteer Ambulance Service

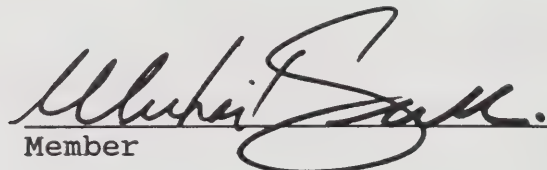
DECISION

1. By Interim Decision dated July 14, 1992, the Tribunal ordered a pre-hearing representation vote to be taken of the voting constituency set out in the application for representation rights.
2. The vote was held August 5, 1992 and the parties agreed to and signed a waiver of a formal hearing. The parties also agreed to an immediate counting of the ballots cast in the representation vote.
3. Having regard to the fact that more than fifty percent (50%) of the ballots cast in the representation vote were cast in favour of the Applicant, and having regard to the fact that the parties agreed to and signed the waiver, the Tribunal hereby confirms that representation rights are granted to the Applicant with respect to the bargaining unit described in paragraph 3 of the Interim Decision of the Tribunal dated July 14, 1992.
4. The Registrar is directed to destroy the ballots cast in the representation vote no earlier than thirty (30) days from the date of this decision unless representations to the contrary are received from any party.

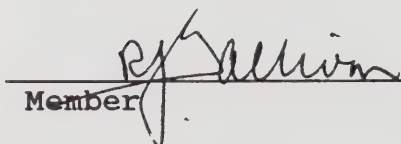
DATED THIS 8th DAY OF SEPTEMBER, 1992



Graeme H. McKechnie, Vice-Chair



Member



Member



Ontario Public Service
Labour
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T/0012/92

IN THE MATTER OF AN APPLICATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

Ontario Public Service Employees Union

Applicant

- and -

The Crown in Right of Ontario
as represented by the Ministry of Health and
Sydenham District Hospital/Wallaceburg Central
Ambulance Communication Centre

Respondent

BEFORE:

G. McKechnie
M. Sullivan
B. Gallivan

Vice-Chairperson
Member
Member

**FOR THE
APPLICANT:**

S. White
Counsel
Gowling, Strathy & Henderson
Barristers & Solicitors

**FOR THE
RESPONDENT:**

S. Gleave
Counsel
Hicks, Morley, Hamilton, Stewart, Storie
Barristers & Solicitors

1. The Union filed an application for representation rights dated May 11, 1992. A pre-hearing representation vote was ordered by an Interim Decision of the Tribunal dated July 14, 1992.

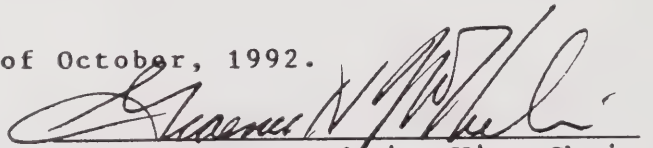
2. The Employer's reply to the Application for Representation included a dispute with respect to the jurisdiction of the Tribunal and the inclusion/exclusion of certain individuals whose ballots were segregated when the vote was taken in this matter.

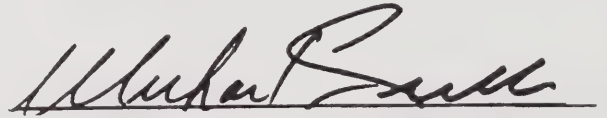
3. By letters dated September 10, 1992, (attached to this Decision as Appendix A), the parties have agreed that the jurisdictional issue is withdrawn and the only issue to be decided is the inclusion/exclusion of certain individuals within the meaning of section 1(1) (f) (iii) of the Crown Employees Collective Bargaining Act.

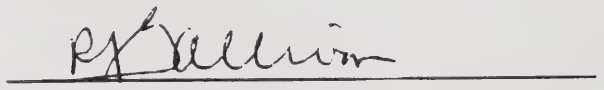
4. After a review of the letters attached as Appendix A to this Decision, the Tribunal appoints Ellen Mole as an Inquiry Officer to examine the claims by both parties and to report back to the Tribunal.

5. Should the parties not accept the Report of the Inquiry Officer, the Tribunal will hear arguments based on the Report of the Inquiry Officer.

Dated at Toronto, this 6th day of October, 1992.


Graeme H. McKechnie, Vice-Chair


M. Sullivan, Member


B. Gallivan, Member

T0012/92

APPENDIX 'A'



Ontario Public Service
**Labour
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T/0012/92-2

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T/0012/92

IN THE MATTER OF AN APPLICATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

Ontario Public Service Employees Union

Applicant

- and -

The Crown in Right of Ontario
as represented by the Ministry of Health
and Sydenham District Hospital/
Wallaceburg Central Ambulance Communication Centre

Respondent

BEFORE:

G. McKechnie
M. Sullivan
B. Gallivan

Vice-Chairperson
Member
Member

FOR THE
APPLICANT:

S. White
Counsel
Gowling, Strathy & Henderson
Barristers & Solicitors

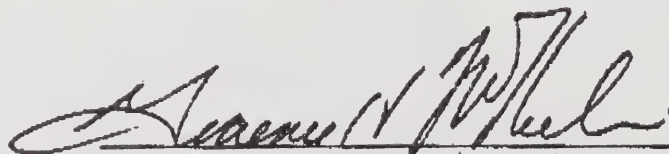
FOR THE
RESPONDENT:

S. Gleave
Counsel
Hicks, Morley, Hamilton, Stewart & Storie
Barristers & Solicitors

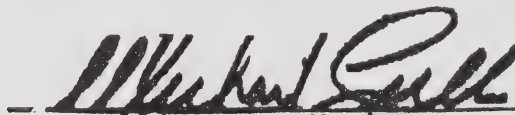
DECISION

1. By Interim Decision dated July 14, 1992, the Tribunal ordered a pre-hearing representation vote to be taken of the voting constituency set out in the application for Representation Rights.
2. The vote was held August 6, 1992. The Applicant Union withdrew its application, without prejudice, for the inclusion/exclusion of the Rotational Shift Supervisors and Administrative Assistant. The Tribunal, therefore, proceeded with the counting of the ballots cast in the representation vote.
3. Having regard to the fact that more than fifty percent (50%) of the ballots cast in the representation vote were cast in favour of the Applicant, and having regard to the fact that the Applicant Union withdrew its objection, the Tribunal hereby confirms that representation rights are granted to the Applicant with respect to the bargaining unit described in paragraph 3 of the Interim Decision of the Tribunal dated July 14, 1992.
4. The Registrar is directed to destroy the ballots cast in the representation vote no earlier than thirty (30) days from the date of this decision unless representations to the contrary are received from any party.

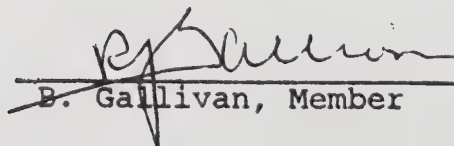
DATED AT TORONTO this 7th day of July, 1993.



Graeme H. McKechnie, Vice-Chair



M. Sullivan - Member



B. Gallivan, Member



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T/0016/92

IN THE MATTER OF AN APPLICATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

Ontario Public Service Employees Union

Applicant

- and -

The Crown in Right of Ontario
as represented by the Ministry of Labour
and The Workers Compensation Appeals Tribunal

Respondent

BEFORE:

G. McKechnie
M. Sullivan
R. Redford

Vice-Chairperson
Member
Member

**FOR THE
APPLICANT:**

C. Dassios
Counsel
Gowling, Strathy & Henderson
Barristers & Solicitors

**FOR THE
RESPONDENT:**

D. MacLeod
Counsel
Genest Murray Desbrisay Lamek
Barristers & Solicitors

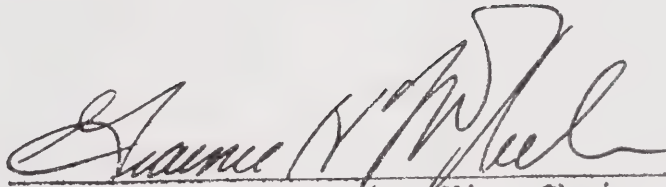
**DATE OF
HEARING:**

November 3, 1992

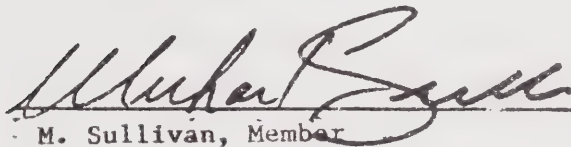
DECISION

1. By Interim Decision dated October 1, 1992, the Tribunal ordered a pre-hearing representation vote to be taken of the voting constituency set out in the application for representation rights. The parties agreed, on November 3, 1992, that the voting constituency set out in paragraph 3 of the interim decision was replaced by Appendix 1 attached to the instant decision.
2. The vote was held October 6, 1992. The parties proceeded to a formal hearing on the matter of a segregated ballot on November 3, 1992. The Tribunal, after reviewing the agreed facts submitted and the arguments presented, gave an oral decision at the hearing, with written decision to follow, that the segregated ballot was not to be counted. Following the oral decision, the parties agreed to an immediate counting of the ballots cast in the representation vote.
3. Having regard to the fact that more than fifty percent (50%) of the ballots cast in the representation vote were cast in favour of the Applicant, the Tribunal hereby confirms that representation rights are granted to the Applicant with respect to the bargaining unit described in paragraph 3, (as amended by the parties and attached as Appendix 1 to the instant decision), of the Interim Decision of the Tribunal dated October 1, 1992.
4. The Registrar is directed to destroy the ballots cast in the representation vote no earlier than thirty (30) days from the date of this decision unless representations to the contrary are received from any party.

DATED THIS 9th DAY OF FEBRUARY, 1993,

A handwritten signature in cursive script, appearing to read "Graeme H. McKechnie", written over a horizontal line.

Graeme H. McKechnie, Vice-Chair

A handwritten signature in cursive script, appearing to read "M. Sullivan", written over a horizontal line.

M. Sullivan, Member

A handwritten signature in cursive script, appearing to read "R. Redford", written over a horizontal line.

R. Redford, Member

All employees of the Workers' Compensation Appeals Tribunal
save and except:

1. The Chair, the Alternate Chair, and all full-time and part-time Vice-Chairs and Members of the Tribunal.
2. Secretary to the Chair.
3. Clerk Steno in the Chair's Office.
4. Executive Assistant to the Chair.
5. Counsel to the Chair.
6. Secretary to Counsel to the Chair.
7. Associate Counsel to the Chair.
8. Administrative Co-ordinator.
9. Chief Administrative Officer.
10. Secretary to the Chief Administrative Officer.
11. Supervisor, Clerical Services.
12. Chief Information Officer.
13. Systems Manager.
14. Systems Officers (Systems trainer, and Information System Technologist).
15. Manager, Research and Statistical Analysis.
16. Appeals Administrator.
17. Publications Counsel.
18. General Counsel.
19. Secretary to General Counsel.
20. Manager - Pre-hearing section.
21. Tribunal lawyers.
22. Articling students.
23. Manager - Medical Liaison Office.
24. Office Co-ordinator.
25. Manager - Intake.
26. Group leader - CD Writers.
27. Manager, Financial Administration.
28. Financial Assistant.
29. Human Resources Officer.
30. Secretary to Manager, Financial Administration and/or the Human Resources Officer.
31. Records Officer.
32. Students employed during their regular vacation period.

and any other persons who are not employees under section 1(1)(9) of the Public Employees



Ontario Public Service
Labour
Relations
Tribunal

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T/0016/92-2

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T/0016/92

IN THE MATTER OF AN APPLICATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

Ontario Public Service Employees Union

Applicant

- and -

The Crown in Right of Ontario
as represented by the Ministry of Labour
and The Workers Compensation Appeals Tribunal

Respondent

BEFORE:

G. McKechnie
K. McDonald
R. Redford

Vice-Chairperson
Member
Member

**FOR THE
APPLICANT:**

C. Dassios
Counsel
Gowling, Strathy & Henderson
Barristers & Solicitors

**FOR THE
RESPONDENT:**

D. MacLeod
Counsel
Genest Murray Desbrisay Lamek
Barristers & Solicitors

**DATE OF
HEARING:**

November 3, 1992

The Tribunal issued an interim decision dated October 1, 1992 which directed that a representation vote be taken among the employees in the voting constituency.

The instant hearing was established to determine the status of a ballot that was segregated in the vote held on October 6, 1992.

At the outset of the hearing, the parties were in agreement that the only employer is the Workers' Compensation Appeals Tribunal. In addition, the parties agreed that the voting constituency set forth in paragraph 3 of the interim decision dated October 1, 1992 was to be replaced by the list of employee positions which is attached to the instant decision as Appendix 1.

With respect to the issue in dispute concerning the segregated ballot, the parties filed an agreed Statement of Facts which is appended to the instant decision as Appendix 2. Briefly, the Union is challenging the ballot cast by Ms. Barbara Taylor. At the representation vote, 60 ballots were cast and Ms. Taylor's ballot was segregated pending the decision of the Tribunal.

The Union argued that the only employees who should be entitled to cast a ballot in the representation vote are those who were employed on both the terminal date, (August 5, 1992), and at the date of the vote which in the instant case was October 6, 1992. It is the Union's contention that since Ms. Taylor was hired on August 31, 1992, she was not an employee as of the terminal date and should not have her ballot counted. The Union argued that a requirement of employment on the terminal date is necessary to prevent an employer from gerrymandering the vote by hiring large numbers of non-union employees, whereas the requirement of employment on the date of the vote ensures that only those individuals who hold positions in the bargaining unit will vote. In support of its argument, the Union referred the Tribunal to re:

The Canadian Union of Educational Workers, Applicant v Queen's University at Kingston, Respondent v Group of Employees, Objectors, a decision of the Ontario Labour Relations Board dated May 31, 1982. The Union also referred the Tribunal to Practice Note Number 9, August, 1964, of the Ontario Labour Relations Board which relates to the requirement that an employee who seeks to cast a ballot in a representation vote must be an employee on the terminal date fixed for the application. The Union argued that section 5 of the Crown Employees Collective Bargaining Act R.S.O. 1980 c 108 as amended and section 9 of the Ontario Labour Relations Act R.S.O. 1980 c 228 as amended are virtually identical and the only difference is that under the Crown Employees Collective Bargaining Act, the Tribunal shall direct that a ballot box be sealed, whereas in the Ontario Labour Relations Act, the Board has discretion.

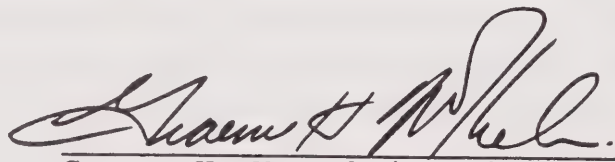
The Employer argued that Ms. Taylor was hired after the terminal date and five weeks prior to representation vote. The Employer noted that there are no decisions of the Tribunal or policy or practice notes to cover the instant situation. The Employer argued that with respect to the protection against gerrymandering, there is no evidence in the instant case that the Workers' Compensation Appeals Tribunal hired non-union employees to influence the representation vote - in fact, only Ms. Taylor was hired after the terminal date. The Employer argued that in re: Queen's University (supra) the purpose of the voting requirements was to ensure that all employees who had an interest in the outcome and who were in the bargaining unit should participate in the vote. In the instant case, the Employer was not objecting to the counting of Ms. Taylor's vote.

The Tribunal considered the agreed Statement of Facts and the arguments put forward by both parties. It was the Tribunal's decision at the hearing that Ms. Taylor's ballot was not to be counted as part of the representation vote process. In the opinion of the Tribunal, it is reasonable and appropriate to require proof

of employment on both the terminal date and the date of the representation vote.

As a result, the Tribunal ordered the ballot box to be unsealed, and with the exception of Ms. Taylor's ballot the remaining ballots counted to determine the results of the representation vote.

Dated at Toronto, Ontario this 17th day of February 1993.



Graeme H. McKechnie, Vice-Chair



K. McDonald, Member



R. Redford, Member

APPENDIX 1

All employees of the Workers' Compensation Appeals Tribunal
save and except:

1. The Chair, the Alternate Chair, and all full-time and part-time Vice-Chairs and Members of the Tribunal.
2. Secretary to the Chair.
3. Clerk Steno in the Chair's Office.
4. Executive Assistant to the Chair.
5. Counsel to the Chair.
6. Secretary to Counsel to the Chair.
7. Associate Counsel to the Chair.
8. Administrative Co-ordinator.
9. Chief Administrative Officer.
10. Secretary to the Chief Administrative Officer.
11. Supervisor, Clerical Services.
12. Chief Information Officer.
13. Systems Manager.
14. Systems Officers (Systems trainer, and Information System Technologist).
15. Manager, Research and Statistical Analysis.
16. Appeals Administrator.
17. Publications Counsel.
18. General Counsel.
19. Secretary to General Counsel.
20. Manager - Pre-hearing section.
21. Tribunal lawyers.
22. Articling students.
23. Manager - Medical Liaison Office.
24. Office Co-ordinator.
25. Manager - Intake.
26. Group leader - CD Writers.
27. Manager, Financial Administration.
28. Financial Assistant.
29. Human Resources Officer.
30. Secretary to Manager, Financial Administration and/or the Human Resources Officer.
31. Records Officer.
32. Students employed during their regular vacation period.

and any other persons who are not employees under section 1(1)(f) of the Crown Employees

T/0016/92

IN THE MATTER OF AN APPLICATION

BEFORE THE ONTARIO PUBLIC SERVICE LABOUR RELATIONS TRIBUNAL

BETWEEN:

THE ONTARIO PUBLIC SERVICE EMPLOYEES' UNION

Applicant

- and -

THE WORKERS' COMPENSATION APPEALS TRIBUNAL

Respondent

AGREED STATEMENT OF FACTS

1. On July 6, 1992 this application was filed. In this application, the Applicant requested that a pre-hearing representation vote be taken.
2. August 5, 1992 was the terminal date fixed for this application.
3. On August 5, 1992 the Respondent filed its Reply. Barbara Taylor's name was not included in List A, B or C to the Reply because she was not employed by WCAT at this time.
4. On August 31, 1992 the WCAT hired Barbara Taylor as a secretary. This position is included in the Applicant's proposed bargaining unit. Ms. Taylor is the only person in the proposed bargaining unit who was hired after the terminal date.
5. Prior to October 1, 1992 the Applicant and Respondent agreed that all employees listed on List C of the Respondent's Reply were entitled to vote. Prior to October 6, 1992 the parties did not discuss Ms. Taylor's voting eligibility.
6. In a decision dated October 1, 1992 the Tribunal directed that a representation vote be taken on October 6, 1992.

7. On October 6, 1992 the vote was held. In the presence of the returning officer and both scrutineers Barbara Taylor asked if she could vote and, if so, whether she could be assured that her vote would be kept secret. The union scrutineer asked that Ms. Taylor's vote be segregated. Accordingly, when Ms. Taylor voted the returning officer segregated her ballot but explained that her vote would be kept confidential. The union has challenged Ms. Taylor's vote.



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T/0021/92

IN THE MATTER OF A COMPLAINT

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

BETWEEN

OPSEU (Paylor)

Complainant

- and -

The Crown in Right of Ontario
(Ministry of Health)

Respondent

BEFORE:

G. McKechnie
M. Sullivan
B. Gallivan

Vice-Chairperson
Member
Member

**FOR THE
COMPLAINANT**

J. Paul
Grievance Officer
Ontario Public Service Employees Union

**FOR THE
RESPONDENT**

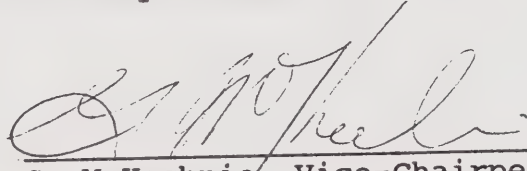
S. Patterson
Counsel
Legal Services Branch
Management Board of Cabinet

T/0021/92

TRIBUNAL ORDER

Enclosed is a Memorandum of Settlement which the parties agreed would be made an Order of the Tribunal.

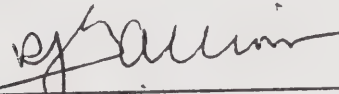
DATED at Toronto, this 19th day of January, 1993.



G. McKechnie, Vice-Chairperson



M. Sullivan, Member



B. Gallivan, Member

In the Matter of a Proceeding before the Ontario Public
Service Labour Relations Tribunal

-between-

The Ontario Public Service Employees Union

(The Union)

-and-

Mr. Mike Paylor

(The Employee)

-and-

The Crown In Right of Ontario
(The Ministry of Health)

(The Employer)

MEMORANDUM OF SETTLEMENT

Whereas the Union filed a Complaint under section 29 of the Crown Employees Collective Bargaining Act on behalf of the grievors Mike Paylor and Rick Lemieux.

And whereas the grievor Mike Paylor filed two grievances, numbered GSB file number 1609/92 and OPSEU file numbers 92F438 and 92F439.

And whereas the parties wish to reach a settlement satisfactory to all.

Therefore the parties have entered into the following settlement in full and final satisfaction of the above Complaint and Grievances:

1. The employee's attendance record shall be amended to reflect that his absences on June 5, 1992 and June 12, 1992 were properly sick leave and not vacation as currently recorded and that the two vacation days shall be returned to the employee's vacation eligibility.

2. Within 90 days of the signing of this Memorandum of Settlement the Employer shall provide a second office to the staff of the Occupational Health and Safety Unit at Penetanguishene Mental Health Centre which shall be for the use of Mr. Paylor.

3. The Employer acknowledges that the actions of Ms. Hirsch constituted a violation of section 29 (1) of the Crown Employees Collective Bargaining Act.

4. This Memorandum of Settlement shall be made an order of the Tribunal.

5. The Union and the Employee shall withdraw the Complaint and the two Grievances set out above.

Michael A. Kelly Rick L. Linn
The Employee 24/12/92

Dec 18/92
Date

Paul
The Union

7/12/92.
Date

[Signature]
The Employer

Dec 24/92
Date



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T/0069/92

IN THE MATTER OF AN APPLICATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

Ontario Public Service Employees Union

Applicant

- and -

621896 Ontario Limited c.o.b. as
West Lincoln Ambulance Service

Respondent

BEFORE:

G. McKechnie
M. Sullivan
D. Guptill

Vice-Chairperson
Member
Member

**FOR THE
APPLICANT:**

S. White
Counsel
Gowling, Strathy & Henderson
Barristers & Solicitors

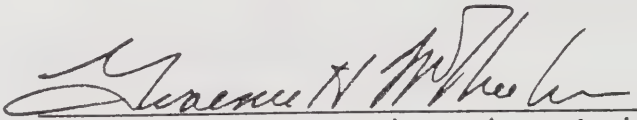
**FOR THE
RESPONDENT:**

A. McDooling/R. McDooling
West Lincoln Ambulance Service

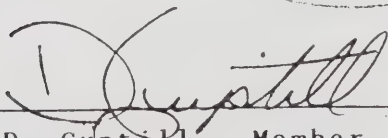
DECISION

1. By Interim Decision dated March 18, 1993 the Tribunal ordered a pre-hearing representation vote to be taken of the voting constituency set out in the application for Representation Rights.
2. The vote was held March 29, 1993 and the parties agreed to and signed a waiver of a formal hearing. The parties also agreed to an immediate counting of the ballots cast in the representation vote.
3. Having regard to the fact that more than fifty percent (50%) of the ballots cast in the representation vote were cast in favour of the Applicant, and having regard to the fact that the parties agreed to and signed the waiver, the Tribunal hereby confirms that representation rights are granted to the Applicant with respect to the bargaining unit described in paragraph 3 of the Interim Decision of the Tribunal dated March 18, 1993
4. The Registrar is directed to destroy the ballots cast in the representation vote no earlier than thirty (30) days from the date of this decision unless representations to the contrary are received from any party.

DATED THIS 13th DAY OF April, 1993


Graeme H. McKechnie, Vice-Chair


M. Sullivan, Member


D. Guptill, Member



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T/0072/92

IN THE MATTER OF A COMPLAINT

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

Ontario Public Service Employees Union

Complainant

- and -

The Crown in Right of Ontario
(Ministry of Correctional Services)

Respondent

BEFORE:

R. Abramsky
M. Sullivan
W. Madigan

Vice-Chairperson
Member
Member

**FOR THE
COMPLAINANT:**

S. Wahl
Counsel
Koskie & Minsky
Barristers & Solicitors

**FOR THE
RESPONDENT:**

M. Lapierre
Counsel
Crown Law Office Civil
Ministry of the Attorney General

HEARING:

March 18, 1993
May 5, 6, 12, 13, 19, 1993
July 5, 6, 1993

INTERIM ORDER

On July 5, 1993, Complainant moved for an interim order in the above-captioned matter, seeking the reinstatement of John Villella to the workplace and vacating his suspension with pay. The Complainant also requested that the Tribunal require the Ministry to show cause to substantiate the continuation of Villella's suspension. At the same time, Complainant requested the production of a number of documents which will be addressed in another Order.

By way of background, Villella, who is President of O.P.S.E.U Local 263, was suspended with pay by the Ministry on December 29, 1992, after a complaint was filed against him under the Ministry's Workplace Discrimination and Harassment Prevention Policy. That suspension has been extended by the Ministry in twenty day intervals under Section 22.1 of the *Public Service Act* and Regulation 18(2) thereunder. On January 13, 1993, the instant complaint was filed under the *Crown Employees Collective Bargaining Act* (the "*Act*"). alleging that the suspension of Villella by the Ministry and the conditions imposed on that suspension violate Section 29 of the *Act* by, *inter alia*, interfering with Villella's ability to administer the local union and interfering with his ability to represent employees at the workplace. An independent investigation into the sexual harassment complaint was commenced but on June 1, 1993, after completing approximately half of the investigation, the investigator withdrew from the case. That action precipitated the

Complainant's motion for interim relief. By July 5, 1993, there had already been five days of hearing before the Tribunal in this matter.

On July 5, 1993, the parties were given a full opportunity to argue their respective positions on the Complainant's motion. At the conclusion of the parties' arguments, we issued an oral decision determining that the Tribunal had jurisdiction to order interim relief and ordered the Ministry to show cause as to why Villella should not be reinstated to his position at Vanier Centre for Women on an alternate schedule from that of the complainant in the sexual harassment matter.

During the remainder of the day on July 5, 1993 and continuing on July 6, 1993, the parties presented testimonial and documentary evidence on the show-cause issue, followed by further arguments by the parties. We reserved ruling at that time.

Having now considered the evidence, arguments and authorities presented by the parties, we make the following **INTERIM ORDER**

1. We conclude that the Tribunal has jurisdiction to issue an interim order under Sections 38(13), 39, 43 and 50(3) of the *Crown Employees Collective Bargaining Act*. A full decision explaining the basis of this conclusion, as well as the remainder of our conclusions in this Interim Order, will be issued subsequently.

2. We conclude that the appropriate standard for the issuance of interim relief is essentially the standard set forth by the Ontario Labour Relations Board in *810048 Ontario Limited c.o.b. as Loeb Highland*, Board file No. 2912-92-M (March 12, 1993). That standard involves an examination of:

(1) whether the Complainant's main application presents an arguable case on the merits, and

(2) a comparison of the harm which may occur if an interim order is granted, and what harm may occur if it is not.

3. We conclude that the first element of the test is met in this case. Complainant's main application presents an arguable case on the merits. The Ministry conceded in oral argument, and the evidence confirms, that the suspension of Villella and the complete prohibition on his visiting the Vanier Centre for Women has adversely affected the administration of Local 263 and the representation of its members.

4. We conclude that the second element of the test for interim relief has also been met. In so ruling, we have compared the relative harm to the Complainant if an interim order reinstating Villella (on alternating shifts with the complainant in the sexual harassment charge) is not granted with the harm to the Ministry and the investigation of the sexual harassment charge if such an order is issued. We conclude, based on the evidence and the facts presented, that, at present, the harm to the Complainant's rights under the Act - harm which has been conceded by the Ministry and demonstrated by the evidence - outweighs the potential for harm to the Ministry and the investigation of the sexual harassment charge against Villella.

5. In so concluding, we note that, according to the Ministry, it suspended Villella and continues to oppose his reinstatement at the Vanier Centre for Women on the basis that his presence at the worksite during the investigation of the sexual harassment complaint against him would undermine and frustrate that investigation. That determination was based on a December 1992 memo from the sexual harassment complainant to the investigator, which expressed significant concern about Villella's remaining in the work

place during the investigation. That memo was sent to the then-Acting Deputy Minister with a cover-letter from the investigator which stated, in part, that "[b]ased on this memorandum, it would seem imperative that the respondent [Villella] be removed from the workplace during the course of the investigation."

6. The evidence shows that the Ministry did not check the assertions contained in the memo with local administrators at the Vanier Centre for Women who might have been able to verify or refute them, or with the investigator about their substance. Nor did the Ministry consider at all the nature of the allegations against Villella, or consider a number of other significant factors listed in the Ministry's own guidelines for suspending an employee under Section 22(1) of the *Public Service Act*. Further, the numerous extensions of Villella's suspension appeared to be automatic, without any reassessment of whether the continuation of the suspension was warranted. Consequently, we conclude that while the evidence established that continuing Villella's suspension would result in demonstrable harm to the Complainant's rights under the *Act*, the evidence that his presence at the worksite would interfere with the investigation of the sexual harassment complaint was, and is, speculative. We note that there is no evidence of any sexual harassment or intimidation complaints against Villella by anyone other than the initial complainant, nor evidence of any prior such conduct by him. We also note that the investigation into the sexual harassment charge has now been on-going for almost seven months and, in light of the investigator's recent withdrawal, will continue for the foreseeable future. Finally, we note that should any intimidation of witnesses involved the sexual harassment charge take place by Villella or should he engage in any conduct which impedes that investigation, this Interim Order is subject to being vacated as well as disciplinary action imposed by the Ministry.

7. We further conclude that, *in appropriate cases*, the Ministry may suspend an employee (even a local union president) when a complaint is made under the Workplace Discrimination and Harassment Prevention Discrimination Policy even though the result of that suspension may interfere with union activities. The appropriateness of such a determination must be based on the individual circumstances of the case, including the factors outlined in the Ministry's own guidelines (which appear thoughtful and fair) and must also consider the rights guaranteed by the *Act*. There must be consistent treatment of employees and a balance must be struck between the ability to conduct an effective investigation under the Workplace Discrimination and Harassment Prevention Policy and the rights of the Union and employees under the *Act*.

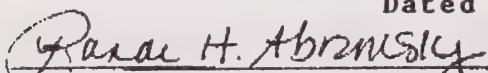
8. In issuing this Interim Order, the Tribunal is not deciding the ultimate merits of this case. While standing alone, the testimony of the then-Acting Deputy Minister did not appear to indicate anti-union animus, that issue and the ultimate issue of whether there has been a violation of the *Act* will be decided only after the hearing in this case is complete and we can assess the entire record and arguments of the parties.

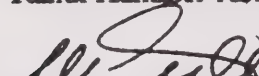
ACCORDINGLY, IT IS ORDERED THAT

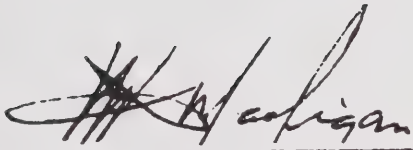
1. As soon as scheduling permits, but not later than ten (10) days from the issuance of this Interim Order, that John Villella be reinstated to his position at Vanier Centre for Women on an alternate schedule from that of the complainant in the sexual harassment charge against him.

2. This Interim Order is subject to being vacated by the Tribunal for reasons establishing cause to do so.

Dated at Toronto, this 14th day of July, 1993.


Randi Hammer Abramsky, Vice-Chair


Michael Sullivan, Member

A handwritten signature in dark ink, appearing to read "William Madigan". The signature is stylized with a large, sweeping initial "W" and a long, horizontal stroke extending to the right.

William Madigan, Member



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T/0073/92

IN THE MATTER OF AN APPLICATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

United Steelworkers of America

Applicant

- and -

**The Crown in Right of Ontario
as represented by the Ottawa Congress Centre**

Respondent

BEFORE:

**G. McKechnie
M. Sullivan
D. Guptill**

**Vice-Chairperson
Member
Member**

**FOR THE
APPLICANT:**

**R. Healey
United Steelworkers of America**

**FOR THE
RESPONDENT:**

**G. McCabe
General Manager
Ottawa Congress Centre**

INTERIM DECISION

1. This is an application for representation rights. The application is dated January 21, 1993 and the terminal date was February 15, 1993,

2. The Applicant has requested that a pre-hearing representation vote be taken.

3. Having regard to the agreement of the parties, the Tribunal determines the following voting constituency:

All employees of the respondent in the City of Ottawa, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff and security guards.

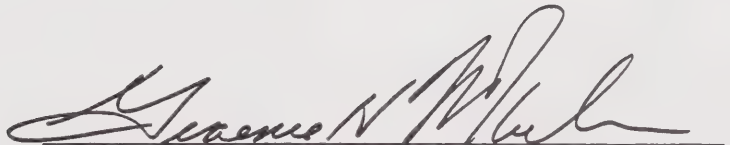
4. Upon an examination of the records of the employee organization and the employer, it appears to the Tribunal that not less than 35 per cent of the employees in the voting constituency were members of the employee organization at the time the application was made.

5. Accordingly, the Tribunal directs that a representation vote be taken among the employees in the voting constituency.

6. The Tribunal further directs that the ballot box containing the ballots cast in the representation vote be sealed and the ballots not counted until the parties have been given full opportunity to present their evidence and make their submissions.

7. The matter is referred to the Registrar.

Dated at Toronto, this 8th day of April 1993



Graeme H. McKechnie, Vice-Chair



Member



Member



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T/0074/92-1

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T/0074/92

IN THE MATTER OF AN APPLICATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

Ontario Public Service Employees Union

Applicant

- and -

City Ambulance Service of Quinte Ltd.

Respondent

BEFORE:

G. McKechnie
M. Sullivan
B. Gallivan

Vice-Chairperson
Member
Member

**FOR THE
APPLICANT:**

S. White
Counsel
Gowling, Strathy & Henderson
Barristers & Solicitors

**FOR THE
RESPONDENT:**

L. Steele
City Ambulance Service of Quinte Ltd.

INTERIM DECISION

1. This is an application for representation rights. The application is dated January 25, 1993 and the terminal date was February 15, 1993,

2. The Applicant has requested that a pre-hearing representation vote be taken.

3. Having regard to the agreement of the parties, the Tribunal determines the following voting constituency:

All employees of City Ambulance Service of Quinte Limited employed in the ambulance service operations, save and except those persons who are not employees within the meaning of Clause (f) of s.s.1, s.1 of the Crown Employees Collective Bargaining Act, R.S.O. 1980, c. 108, as amended.

4. Upon an examination of the records of the employee organization and the employer, it appears to the Tribunal that not less than 35 per cent of the employees in the voting constituency were members of the employee organization at the time the application was made.

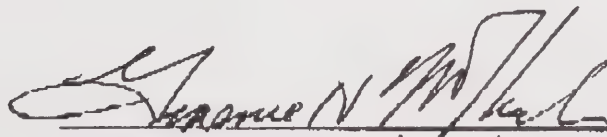
-2-

5. Accordingly, the Tribunal directs that a representation vote be taken among the employees in the voting constituency.

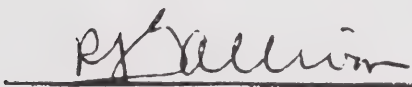
6. The Tribunal further directs that the ballot box containing the ballots cast in the representation vote be sealed and the ballots not counted until the parties have been given full opportunity to present their evidence and make their submissions.

7. The matter is referred to the Registrar.

Dated at Toronto, this 26th day of March 1993


Graeme H. McKechnie, Vice-Chair


M. Sullivan - Member


B. Gallivan - Member



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T/0074/92

IN THE MATTER OF AN APPLICATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

Ontario Public Service Employees Union

Applicant

- and -

City Ambulance Service of Quinte Ltd.

Respondent

BEFORE:

G. McKechnie	Vice-Chairperson
M. Sullivan	Member
B. Gallivan	Member

**FOR THE
APPLICANT:**

S. White
Counsel
Gowling, Strathy & Henderson
Barristers & Solicitors

**FOR THE
RESPONDENT:**

L. Steele
City Ambulance Service of Quinte Ltd.

HEARING:

May 5, 1993

DECISION

1. By Interim Decision dated March 26, 1993, the Tribunal ordered a pre-hearing representation vote to be taken of the voting constituency set out in the application for Representation Rights.
2. The vote was held April 5, 1993. The parties proceeded to a formal hearing on the matter of the scope of the bargaining unit; that is, whether there should be two units, one for full-time and one for part-time employees; or whether there should be one unit. The Tribunal gave an oral decision that there will be one bargaining unit comprising both full-time and part-time employees. The parties agreed to an immediate counting of the ballots cast in the representation vote.
3. Having regard to the fact that more than fifty percent (50%) of the ballots cast in the representation vote were cast in favour of the Applicant, and having regard to the decision of the Tribunal on the matter of the bargaining unit, the Tribunal hereby confirms that representation rights are granted to the Applicant with respect to the bargaining unit described in paragraph 3 of the Interim Decision of the Tribunal dated March 26, 1993.
- .
4. The Registrar is directed to destroy the ballots cast in the representation vote no earlier than thirty (30) days from the date of this decision unless representations to the contrary are received from any party.

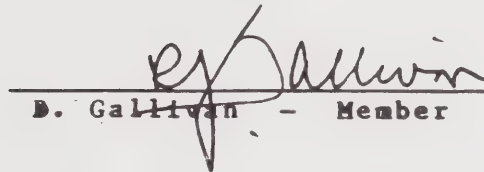
DATED THIS 13th DAY OF May, 1993



Graeme H. McKechnie, Vice-Chair



M. Sullivan - Member



D. Gullivan - Member



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T/0074/92

IN THE MATTER OF A COMPLAINT

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

Ontario Public Service Employees Union

Complainant

- and -

City Ambulance Service of Quinte Ltd.

Respondent

BEFORE:

G. McKechnie
K. McDonald
B. Gallivan

Vice-Chairperson
Member
Member

FOR THE
COMPLAINANT:

S. White
Counsel
Gowling, Strathy & Henderson
Barristers & Solicitors

FOR THE
RESPONDENT:

L. Steele
City Ambulance Service of Quinte Ltd.

A hearing was held May 5, 1993, at which the Tribunal heard evidence and arguments concerning bargaining unit designation. An oral decision was given at the hearing. The following confirms the oral decision.

The Ontario Public Service Employees Union (Applicant) requests that the bargaining unit to be designated at the Employer, City Ambulance Service Quinte Ltd. should include both full-time and part-time employees. The Respondent Employer proposed that there be two (2) separate bargaining units - one for full-time and a separate one for part-time employees. At the date of the vote, there were approximately 19 full-time employees and 22 part-time employees. The exact number is not the real issue, rather for the Respondent Employer, the issue is its belief that the ambulance service is unique and as a collateral argument, there are more part-time employees than there are full-time employees.

The Respondent introduced evidence through Mr. Leonard Steele, owner/operator of the ambulance service, who testified that in his view the service was unique because there were four geographic locations; Belleville, Napanee, Picton and Madoc. In addition, the Bellville Centre had responsibility for Shannonville Motosport, a race track. Mr. Steele testified that the part-time hours were spent, in large measure, covering the race track. He testified that wage rates were different between full-time and part-time employees based primarily on length of service and qualifications. He also testified that full-time employees participate in the benefit plans, but only some part-time employees participate, and the difference is basically in the percentage paid of some plans, such as life insurance. Mr. Steele testified that there was no difference in the duties of an ambulance attendant based on a person's part-time or full-time status. Mr. Steele testified that the only difference between the supervision of full-time and part-time employees was that part-time employees were generally under the supervision of a full-time employee because of qualifications and seniority. Shift differentiation was not based on the number

of hours worked but more commonly on the basis of experience.

The Union did not call any evidence in this matter.

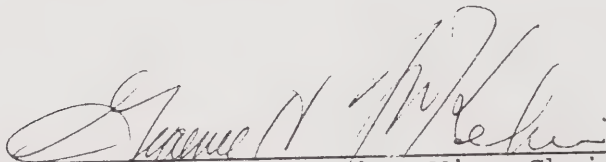
The Employer argued that, in its view, there were differences in the interests of full-time and part-time employees and, as a result, there should be two bargaining units. The Employer then stated a large proportion of the part-time employees were working full-time elsewhere and as a result, such items as fringe benefit packages could be of little interest to the part-time employee. Although the Respondent Employer stated that it was easier to administer one bargaining unit versus two bargaining units, it believed that there was a disadvantage for the employees to have one bargaining unit.

The Union argued that the Employer's viewpoint with respect to fringe benefits and interests of full-time employees versus part-time employees was not supported by any evidence that was adduced at the hearing. It was the Union's contention that available jurisprudence would support a more inclusive bargaining unit rather than separation. The Union referred the Tribunal to: Ontario Public Service Employees Union and the Crown in Right of Ontario, decision of the Tribunal dated November 27, 1978 (Shime); Ontario Public Service Employees Union and the Crown in Right of Ontario, Ministry of Health and Service Employees Union, Local 210, decision of the Tribunal dated April 30, 1979 (Shime); Re: International Brotherhood of Electrical Workers, Local 264 v. Radio Station CHQM, Division of Q Broadcasting Ltd. et al, 75 CLLC 1227. The Union also referred the Tribunal to the Canada Labour Relations Board policies and procedures in this matter.

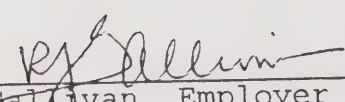
The Tribunal has considered the evidence put forward by the Respondent Employer and the arguments of both parties. The issue to be determined is whether the Employer has demonstrated that the City Ambulance Service Quinte Ltd. has a unique quality, such that

there should be two bargaining units - one for full-time employees and one for part-time employees. The Tribunal has considered this argument in view of the jurisprudence submitted and, based on the facts of this case, does not find that the Employer has demonstrated that the ambulance service has a unique quality such that two bargaining units should be established. The onus is on the Employer to satisfy the Tribunal that one bargaining unit would not be appropriate, given the circumstances of the employment relationship, and the Tribunal finds that this has not been done.

Dated at Toronto, this 29th day of September, 1993.


 Graeme H. McKechnie, Vice Chair

I concur


 R. Galivan, Employer Member

I concur


 Kathy McDonald, Employee Member



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T/0075/92

IN THE MATTER OF AN APPLICATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

Ontario Public Service Employees Union

Applicant

- and -

The Crown in Right of Ontario
as represented by the Ministry of Health and
520212 Ontario Limited C.O.B. AS
St. Lawrence and District Ambulance Services
and Osgoode and District Ambulance Services

Respondent

BEFORE:

G. McKechnie
M. Sullivan
W. Madigan

Vice-Chairperson
Member
Member

**FOR THE
APPLICANT:**

S. White
Counsel
Gowling, Strathy & Henderson
Barristers & Solicitors

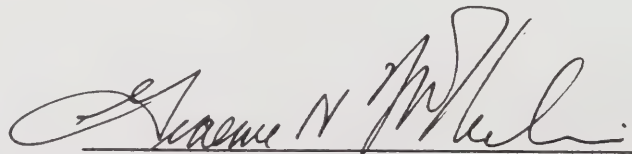
**FOR THE
RESPONDENT:**

R. Dalgleish

DECISION

1. By Interim Decision dated March 18, 1993 the Tribunal ordered a pre-hearing representation vote to be taken of the voting constituency set out in the application for Representation Rights.
2. The vote was held April 15, 1993 and the parties agreed to and signed a waiver of a formal hearing. The parties also agreed to an immediate counting of the ballots cast in the representation vote.
3. Having regard to the fact that more than fifty percent (50%) of the ballots cast in the representation vote were cast in favour of the Applicant, and having regard to the fact that the parties agreed to and signed the waiver, the Tribunal hereby confirms that representation rights are granted to the Applicant with respect to the bargaining unit described in paragraph 3 of the Interim Decision of the Tribunal dated March 18, 1993.
4. The Registrar is directed to destroy the ballots cast in the representation vote no earlier than thirty (30) days from the date of this decision unless representations to the contrary are received from any party.

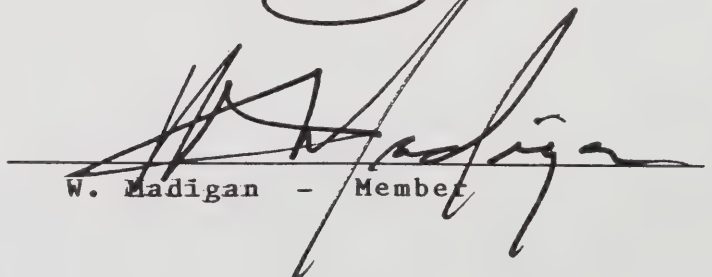
DATED THIS 6th DAY OF May, 1993



Graeme H. McKechnie, Vice-Chair



M. Sullivan - Member



W. Madigan - Member



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T/0076/92

IN THE MATTER OF A COMPLAINT

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

Ontario Public Service Employees Union

Complainant

- and -

**The Crown in Right of Ontario
(Ministry of Health)**

Respondent

BEFORE:

**R. Abramsky
L. Kinnear
R. Gallivan**

**Vice-Chairperson
Member
Member**

**FOR THE
COMPLAINANT:**

**D. Wright
Counsel
Ryder, Whitaker, Wright & Chapman
Barristers & Solicitors**

**FOR THE
RESPONDENT:**

**R. Atkinson
Counsel
Hicks, Morley, Hamilton, Stewart, Storie
Barristers & Solicitors**

HEARING:

April 15, 1993

INTERIM ORDER

At issue is Complainant's motion to consolidate two additional matters - T/0092/92 and T/0093/92 - with the case before us. Respondent objects to this proposed consolidation. This matter was fully argued by the parties at the commencement of the hearing on April 15, 1993.

The Complaint before us consists of two parts, which the parties have referred to as T/0076/92(a) and T/0076/92(b), and allege violations of Sections 29(1) and 29(2)(c) of the *Crown Employees Collective Bargaining Act* (the "Act.") Those provisions provide as follows:

29(1) No person who is acting on behalf of the employer shall participate in or interfere with the selection, formation or administration of an employee organization or the representation of employees by such an organization, but nothing in this section shall be deemed to deprive the employer or any person acting on behalf of the employer of his freedom to express his views so long as he does not use coercion, intimidation, threats, promises or undue influence.

29(2) The employer or any person acting on behalf of the employer shall not,

* * *

(c) seek by intimidation, by threat of dismissal or by any other kind of threat or by the imposition of a pecuniary or any other penalty or by any other means to compel an employee to become or refrain from becoming or to continue or cease to be a member of an employee organization, or to refrain from exercising any other right under this Act...

In addition, the Complaint alleges a violation of Section 29(3) of the Act, which counsel is not pursuing.

Complaint T/0076/92(a), as written on Form 28 and attachments thereto, alleges as follows:

1. On or about December 2, 1992, Local 439 Vice-President, Hugh Adams advised Dave G. Hunter, Administrator Brockville Psychiatric Hospital that all labour relations and any subsequent meetings would be suspended until such time as the Minister of Health issued the final decisions with regard to the exact financial impact the budget would have at B.P.H.
2. On or about January 4, 1993, Art Lane, Supervisor Regional Membership Services O.P.S.E.U. and Local 439 Vice-President, Hugh Adams, confirmed to Dave G. Hunter Administrator and P. Pinto, Assistant Administrator- Brockville Psychiatric Hospital, that labour relations were suspended.
3. On or about January 5, 1993, Nancy Lane, President Local 439 confirmed that labour relations were suspended in speaking with Linda Peever, Assistant Administrator, Patient Care, Brockville Psychiatric Hospital.
4. On or about January 8, 1993, Dave G. Hunter, Administrator, B.P.H. proceeded with an Employee-Employer Relations Committee meeting when there were no employee representatives present.
5. On or about January 18, 1993, minutes of the above EERC meeting were circulated to the membership of Local 439.

Complaint T/0076/92(b) further alleges as follows:

1. On or about January 12, 1993, the grievor Nancy Lane, President Local 439, received a letter dated January 8, 1993 from Dave G. Hunter, Administrator B.P.H. advising that Linda Peeve, Assistant Administrator, Patient Care, had been directed to provide relief coverage for the grievor to enable her to attend at his office on January 13, 1993 to meet with him.
2. On or about December 2, 1992 and January 4, 1993 and January 4, 1993, Dave G. Hunter had been made aware that all labour relations were suspended.

The relief requested includes a request for a written apology, a declaration that the Employer's actions have violated the Act, and a cease and desist order prohibiting Ministry officials "from interfering with the Administration of the employee organization in so far as conducting non-quorum Employee-Employer Relations Committee Meetings and distributing minutes of said meeting directly to the membership of Local 439."

According to counsel for Complainant, David Wright, the genesis of this complaint - as well as the two others that Complainant seeks to consolidate with it - started in October 1992 when a review was undertaken of the budgets for Brockville Psychiatric Hospital as well as other psychiatric hospitals, with the aim to cut the budget by 25%. He stated that a consultant was hired in November 1992 to review the budget and make recommendations, and that labour-management meetings were held as part of this process. According to the complaint, at one such meeting on December 2, 1992, local union representatives complained to management that the Ministry was not sharing information and informed management that until its final plans on the budget were disclosed, it was suspending labour relations activities. According to Counsel, the local reiterated that it was suspending labour relations at a meeting with administration on or about December 30, 1992 and, at that time, specifically informed management that its designated representative was Mr. Art Lane, Supervisor Regional Membership Services O.P.S.E.U. According to the Complaint, despite being advised that voluntary labour relations activity was suspended, management held an Employee-Employer Relations Committee meeting and distributed minutes of that meeting and also tried to meet with Local Union President Nancy Lane instead of the representative designated by the Union.

According to the Complainant, T/0092/92 and T/0093/92, are a continuation of the Ministry's alleged refusal to accept the local union's decision to suspend labour

relations and/or deal with its designated representative, although it acknowledges that additional issues are also raised.

Complaint T/0092/92 is not signed or dated, but was submitted to the Tribunal by letter a cover letter from O.P.S.E.U. Grievance Officer Jim Paul dated March 17, 1993. It alleges violations of Sections 29(1) and 29.2(c) of the Act, and states as follows:

On or about February 25, 1993, Linda Eckert, Regional Personnel Administrator Brockville Psychiatric Hospital, wrote a letter of Nancy Lane, Local 439 President stating that unless Article 19.4 of the compressed work week agreements are re-negotiated, the future of such agreements are in question. (A copy of said letter is attached as Appendix D). This letter came as a result of current grievances filed by members of Local 439.

On or about March 10, 1993, Linda Eckert advised Nancy Lane that should the current grievances proceed and in fact be upheld, five staff would be laid-off each year to finance the cost of the grievances.

On or about March 4, 1993 Linda Eckert, Regional personnel Administrator told David McDougall, Chief Steward, Local 439 and Bryon Boone, Steward, Local 439 that the Stat Holiday grievances filed by our Local would cost more than the \$174,000.00 she stated in a letter to Nancy Lane, President, Local 439. She stated that wining the grievance would cost "5 jobs per year ad infinitum."

The relief sought is an apology, a declaration and a cease and desist order.

On its face, the Complaint does not state or mention the suspension of labour relations or the alleged designation of union representative Art Lane. According to counsel for Complainant, however, this complaint raises the same legal issue as T/0076/92(a) and (b), specifically the alleged refusal by management to deal with the Union's designated representative by seeking to re-negotiate the compressed work week

with the Local 439 President. It further contends that management's alleged actions constituted intimidation in violation of Section 29 of the Act.

Complaint T/0093/92, which is also not signed or dated, and which was submitted at the same time and in the same manner as T/0092/92, also alleges a violation of Section 29(1) and 29.2(c) of the Act, and contends as follows:

1. On or about December 2, 1992, Local 439 Vice-President, Hugh Adams advised Dave G. Hunter, Administrator Brockville Psychiatric Hospital that all labour relations and any subsequent meetings would be suspended until such times as the Minister of Health issued the final decision with regard to the exact financial impact the budget would have at B.P.H.
2. On or about February 19, 1993 Linda Eckert, Regional Personnel Administrator, conducted a meeting with Mr. Jack Hewitt, Director of Materials Management, and Dennis Leeder, Steward Local 439, for the purpose of implementing a compressed work week shift schedule. Attached as Appendix "D" is a copy of the letter dated February 22, 1993 summarizing that meeting.
3. On or about March 10, 1993, Linda Eckert advised Nancy Lane, Local 439 President of the implementation of the new shift schedule for the Transportation Department.

Appendix "C" of the complaint also reveals that the Union informed management that the compressed work week shift schedule for the Transportation Department violated a memorandum of settlement involving a prior Tribunal complaint, which Complainant acknowledges is an additional issue raised by this complaint. The relief sought is an apology, a declaration and cease and desist order "in so far as implementing a compressed work week shift schedule without consultation of the Union."

II.

In support of its motion to consolidate, counsel for Complainant contends that the same legal issue is common to all three matters and that the same factual issues - particularly what was said by the Union regarding the suspension of labour relations activities and the designation of Art Lane as its representative - must be determined and are relevant to each complaint. Complainant asserts that the three complaints allege a course of conduct by the Respondent to ignore its designated representative and its decision to suspend labour relations and that each complaint is one example of that conduct. Because of this, it asserts that the claims should be dealt with and heard together. In its view, consolidation would result in the efficient use of the resources of the parties as well as the Tribunal and avoids the possibility of inconsistent factual findings and legal conclusions.

In terms of the process, Complainant acknowledges that the two additional complaints were not signed or dated, but contends that the cover letter with which the complaints were submitted corrects those omissions. It submits that such defects are technical and immaterial under Section 55 of the Act, which provides "No proceedings under this Act are invalid by reasons of any defect of form or any technical irregularity and no such proceedings shall be quashed or set aside if no substantial wrong or miscarriage of justice has occurred." It further asserts that the Respondent was aware of the additional allegations and that mediation sessions involving T/0076/92(a) and (b) also dealt with the allegations in T/0092/92 and T/0093/92.

Respondent, in opposing the motion to consolidate, contends that procedurally, T/0092/92 and T/0093/92 are unsigned and undated complaints and consequently not properly before the Tribunal. As such, it asserts, they are not yet "proceedings" and

cannot be consolidated. It also submits that Respondent's willingness to address the contentions in T/0092/92 and T/0093/92 during the mediation sessions for T/0076/92 should not be used against it for the purposes of consolidation.

On the merits of the motion, the Respondent asserts that the relevant standard for consolidation is set forth in *Westinghouse Canada Inc.*, [1983] O.L.R.B. Rep. Feb. 295, which adopts the standard of "a common question of law or fact bearing sufficient importance in proportion to the rest of the action." In its view, the proposed motion to consolidate fails this test. It asserts that the latter complaints are based on different facts, involve different individuals and a different time period as well as raise new substantive legal and factual issues not addressed by T/0076/92(a) and (b). Respondent contends that because each complaint raises different factual issues there is no risk of inconsistent results - one may be a violation while another is not. Nor, it submits, would there be any efficiency achieved. On the contrary, it contends that this proceeding would be significantly prolonged by consolidation.

III.

There is no question the Tribunal has the power to consolidate proceedings. Regulation 39 under the Act specifically provides as follows:

Where the Tribunal considers it necessary, it may at any time direct that a proceeding before the Tribunal be consolidated with any other proceeding before the Tribunal and it may issue such directions in respect of the conduct of the consolidated proceedings as it considers advisable.

The question is whether this is an appropriate case to consolidate.

In *Westinghouse Canada Inc.*, [1983] O.L.R.B. Rep. Feb. 295, the Ontario Labour Relations Board was faced with a motion to consolidate and adopted the standard set forth by the court in *Samuel v. Klein*, (1976) 3 C.P.C. 21 at 25-26 by Estey, J., wherein the standard for consolidation was defined as "a common question of law or fact bearing sufficient importance in proportion to the rest of the action." (Id. at 297). In the case before the Board, the first complaint alleged that Westinghouse violated what was then Section 24 of the *Occupational Health and Safety Act*. The second complaint alleged that an inspector with the Occupational Health and Safety Branch of the Ministry of Labour, in the course of carrying out the required safety inspections, dealt with the Complainant in a way that violated the Ontario *Labour Relations Act*. The Board determined that there was a "lack of overlap on critical facts between the two complaints...." (Id. at 298). It explained at p. 296:

It is obvious that the ongoing question of health and safety control in this plant forms the backdrop against which both complaints evolve. But there the commonality between the two complaints essentially ends. Each complaint sets out a long list of clashes and incidents in which Mr. Gray [the Complainant] and one of the respondents became involved, but those specific and critical incidents are virtually without overlap in the two cases. The filings do *not*, for example, raise common inspection incidents at which the Ministry respondent and the employer respondent are alleged to have together dealt improperly with the complainants. Nor is a theory of common design put forward. Rather, the theory of liability in each complaint is wholly distinct, as one might expect in view of the wholly different roles and obligations of the two named respondents.

(Emphasis in original) On this basis, as well as policy considerations under the *Occupational Health and Safety Act*, the Board denied the motion to consolidate.

We approve of and adopt the standard set forth in *Westinghouse Canada Inc.*, *supra*. It simply makes sense that if there are common questions of law or fact which are of sufficient importance in proportion to the rest of the action, the matters should be

consolidated. Where two or more proceedings involve significant common questions of law or fact there is a real risk of inconsistent results if the proceedings are not consolidated. In addition, such commonality would lead to a duplication of evidence and effort and, given the limited resources of the parties, as well as the Tribunal, such a result should be avoided. The test, however, is a two-part test: there must be common questions of law or fact and they must be of sufficient importance in relation to the rest of the action to warrant consolidation.

In our view, complaints T/0092/92 and T/0093/92, as developed and explained by counsel for Complainant, meet the standard of "a common question of law or fact." All three involve a common background leading up to the local union's suspension of labour relations. Consequently, all three involve the factual issues of what was communicated, to whom and when. All three complaints, as developed and explained by counsel, involve the legal issue of whether the Respondent, by allegedly ignoring the local union's suspension of labour relations and attempting to deal with the local union president or other local union official instead of the assertedly designated representative, interfered with the union's rights under Section 29 of the Act. Although each complaint involves a different factual circumstance in which this alleged violation occurred, they each involve a common theory of violation of the Act and the identical background facts. This being so, the first part of the consolidation test is met - there are common questions of fact and law involved in all three claims. Consequently, the failure to consolidate would lead to a real risk of inconsistent factual findings as well as inconsistent legal conclusions.

Whether the second part of the test is met, however, is more difficult to discern. On its face, the complaint in T/0092/92 does not mention the alleged suspension of labour relations or the designation of Art Lane as the local's representative. Further, both T/0092/92 and T/0093/92 appear to focus on the subject of the compressed work week

(although T/0093/92 does restate the suspension of labour relations activities by the local). As a result, it is difficult to determine if the common questions of fact or law bear a sufficiently significant proportion to the rest T/0092/92 and T/0093/93 to warrant consolidation. According to counsel for Complainant, however, the common questions of law and fact are central to T/0092/92 and T/0093/92. Based on that representation, which we expect counsel to prove at the hearing, we conclude that even though the latter complaints raise a number of additional facts and legal issues which are not part of T/0076/92(a) and (b), the commonality between them bears a sufficiently important proportion to the rest of the action to warrant consolidation. There is, however, one caveat with respect to T/0092/92.

We used the phrase "as developed and explained by counsel" in the preceding paragraph of this Interim Order to point out that the allegations contained in T/0092/92 fail to refer clearly to the suspension of labour relations by the local union, as do T/0076/92(a) and (b) and T/0093/92. Although we accept the representations of counsel for Complainant that the suspension of labour relations forms a significant part of the Complainant's allegations, under Regulation 31, a complainant must set forth "a concise statement of the material facts, actions and omissions upon which he intends to rely as constituting such improper or irregular conduct...." Although a liberal reading of a complaint may be preferable under a remedial statute such as the *Crown Employees Collective Bargaining Act*, the absence of this allegation - which forms the basis of the motion for consolidation - is problematic.

That leaves us with two choices. One choice would be to deny the motion to consolidate T/0092/92 because it does not specifically allege the suspension of labour relations. The problem with that course of action, however, is that the Complainant could easily amend its complaint and at our next scheduled hearing date renew its motion to

consolidate. The second approach is to grant the motion to consolidate contingent on an amendment of the complaint in accordance with counsel's representations to the Tribunal. If the complaint is not so amended within thirty (30) days, the motion to consolidate would be denied. In the interests of expeditious resolution of the issues in dispute, we prefer this second option. *See e.g. OPSEU and Ministry of Corrections (T/0003/86) (Devlin, Vice-Chair)*(allowing amendment to correct deficiency in the complaint).

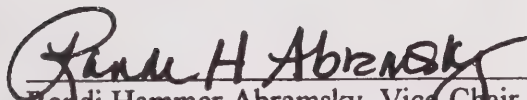
In reaching our determinations in this Interim Order, we have considered the Respondents contention that T/0092/92 and T/0093/92 were dealt with in mediation during T/0076/92(a) and (b) only in an attempt to resolve all of the outstanding issues and should not be used to support a consolidation order. Our ruling to consolidate is not based on the fact that the underlying issues were discussed in mediation, but on the fact that there are common issues of fact and law which appear to be of sufficient importance in relation to the rest of the action to warrant consolidation. Consequently, that fact did not form a basis to order consolidation, although the absence of such mediation efforts could well be a basis to deny consolidation.

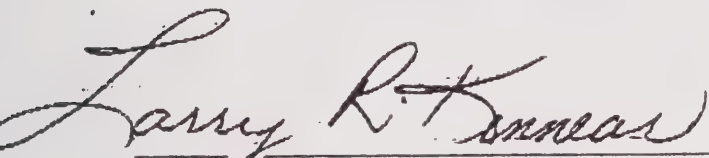
Finally, we conclude that the absence of a signature and date on complaints T/0092/02 and T/0093/92, in light of the transmittal cover letter which contains both, is a technical matter and obviated by Section 55 of the Act.

Accordingly, **IT IS ORDERED THAT**

1. T/0092/92 is hereby consolidated with T/0076/92(a) and (b).
2. T/0093/92 is hereby consolidated with T/0076/92(a) and(b), contingent on amendment of the complaint within thirty (30) days from the issuance of this Interim Order.

Dated this 6th day of July, 1993.


Randi Hammer Abramsky, Vice-Chair


Larry R. Kinnear, Member

"I Dissent" (dissent attached)

R.J. Gallivan, Member

PUBLIC SERVICE LABOUR RELATIONS TRIBUNAL

Case # T/0076/92 (a) and (b)

DECISION OF R.J. GALLIVAN

If these complaints are pursued, then I would agree with my colleagues that the Tribunal should exercise its discretion and apply Section 55 of the Act in order to rectify the mistakes the union made in the manner in which it filed complaints T/0092/92 and T/0093/92 by failing to date or sign them. However, with the greatest respect, I do not agree that those complaints should be consolidated with complaints T/0076/92 (a) and (b).

It seems to me that the correct application to this case of the test set out by the court in re: Samuel v. Klein (1976) 3 C.P.C. leads to the conclusion that the complaints are sufficiently different and distinct that they should not be consolidated. I come to that view by looking at the core substance of the two sets of complaints and concluding that the common elements of fact or law in each do not bear "sufficient importance in proportion to the rest of the action" (idem p.297) to warrant saying they are for all intents and purposes the same. Lacking that essential sufficiency of commonality, they should not be consolidated.

Complaints T/0076/92 (a) and (b) are allegations that the employer violated the Act apparently by attempting to carry on business as usual after the union unilaterally had decided to "suspend labour relations" in order to force the release of information by the Minister which wasn't within the purview of this local Hospital. It is not clear what the union means by "suspension of labour relations" since the information in the complaints as supplemented by the opening statement to the Tribunal by the union's counsel seems to imply that it means whatever the union wants it to mean from moment to moment to achieve its ends. It apparently means, for example, that the collective agreement continues to apply on some days but not on days when grievances are being processed requiring involvement of boycotting local union functionaries whose dealings with the employer have been "suspended".

However, whatever it means, the clear implication and major focus of the complaint is that the employer didn't respond in a way suitable to the union, and so thereby somehow violated the Act. Again based on the facts alleged in the complaint and by the union's counsel,

the evidence apparently will deal with how management tried to continue managing a unionized location while under some ill-defined boycott by the union whose target was elsewhere but whose aim was off.

The fundamental or essential core of the second set of union complaints, T/0092/92 and T/0093/92, deals with a quite different matter. It appears from the materials included in the complaints that the province-wide collective agreement allows for local negotiations and local agreements on working hours, including compressed work weeks. According to complaint T/0092/92, the union grieved an issue under the compressed work week local agreement and then took exception to the substance of management's answer to that grievance. The answer apparently pointed out the potential cost of acceding to the grievance and the union considered that practical sort of answer as a management threat designed to "interfere, undermine, intimidate and unduly influence" local union members.

Absolutely no mention is made in any of the T/0092/92 complaint documents of the issue of "suspended labour relations", and it is clear why that is so: the union's main concern is with its grievance over the fact that the compressed work week local agreement was breached, it claims, in some manner contrary to its interpretation of the settlement of an earlier dispute before this Tribunal over that hours of work issue.

By Regulation under the Act, complaints to the Tribunal are filed on a form which requires, among other things, that the complainant outline any steps taken to resolve the matter before filing the complaint. The only statement the union makes in T/0092/92 in response to that procedural requirement is contained in Appendix C of the complaint form which refers to the compressed work week grievance mentioned earlier:

"1. On or about March 10, 1993, Nancy Lane, Local 439 President, advised Linda Eckert, Regional Personnel Administrator Brockville Psychiatric Hospital, of the Union's position with regard to the current grievances."

That statement is significant because the union itself identifies the local union president as the agent who responded on behalf of the union to the employer on the compressed work week grievances, the very agent with whom the employer earlier had been told not to deal when the union "suspended labour relations". If that latter dispute had been intended as a parallel or even peripheral complaint to the compressed work week issue, a presumably rationally behaving union hardly would so carelessly undermine its credibility and argument on the T/0076/92 complaints by citing its local union president as the one continuing to deal with Hospital management when that very president supposedly was still leading the boycott against

management.

Assuming the union was conscious of the implications of its complaint, I conclude from the foregoing that when complaint T/0092/92 was drafted the core issue in the union's mind was its working hours grievance, not management's response to "suspended labour relations". Based on that conclusion, I believe my colleagues are wrong in inviting the union now to re-think and amend its T/0092/92 complaint by adding "suspended labour relations" as one of the grounds for its allegations and by so doing giving legitimacy after the fact to its request for consolidation.

Complaint T/0093/92 on the other hand doesn't need amendment because one of its allegations against management is identical to one of its earlier charges in T/0076/92 (a) about "suspended labour relations". Again, however, the core of this later complaint is the compressed work week issue. The sole information the union gives in its written complaint to the Tribunal regarding steps taken to solve the dispute is the following in Appendix C:

- "1. On or about March 10, 1993, Nancy Lane, Local 439 President advised Linda Eckert, Regional Personnel Administrator that the compressed work week shift schedule for the Transportation Department was in direct violation of the Memorandum of Settlement dated November 14, 1991.
2. On or about March 10, 1993, Laurie Fish, OPSEU Staff Representative, wrote a letter to Linda Eckert confirming the Union's position with regard to the new shift schedule. A copy is attached and marked as Appendix 'E'."

Note again that it is the boycotting local union president who is shown as continuing to deal with the Hospital management on the compressed work week issue with apparent disregard for the negative implications that has for the union's T/0076/92 complaints.

Appendix 'E' to which reference is made above is a short letter from the union to the Hospital, the main body of which is as follows:

" It is my understanding that recently a Compressed Work Week Agreement was put in place for the employees in the Transportation Department. This letter is to advise you that I shall be filing a complaint based on your disregard for the Memorandum of Settlement dated November 14, 1991 resolving a Tribunal complaint dated August 11, 1991.

I hereby submit that this new scheduling continue in

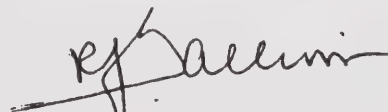
the Transportation Department as I would not want the membership to suffer in any way for your violation. Should you decide to cease this Agreement, I shall have no alternative but to file a further complaint.

I trust that you shall govern yourself accordingly."

Once again there is no mention of the "suspended labour relations" issue, because clearly the complaint continues to be over the union's discontent with the Hospital's view of the compressed work week local agreement. "...I shall be filing a complaint based on your disregard for the Memorandum of Settlement" the letter says, not for your response to our "suspension of labour relations" campaign. If that latter issue even remotely was in the union's mind when it filed this later complaint, I would have expected to see at least some passing reference to it when explaining to the Tribunal any steps taken to resolve the issue raised in the complaint. The local union's silence is pregnant with significance and in my view is inadequately explained by any of the submissions made to us by the union's counsel.

I conclude therefore, that the key legal test delineated by the courts for consolidation of the two sets of complaints has not been met. The "suspension of labour relations" is at the core of the first complaints; at best it is at the periphery of the two later complaints. The "question of law" in the first complaints is whether or not the Act has been violated; in the second it is whether either of the local or master collective agreements has been breached over the hours of work issue (in which case, of course, the complaint wouldn't even properly be before this Tribunal). Although in one of the two later complaints the union raises the "suspension of labour relations", the documents filed in support of the complaint clearly demonstrate that that issue is not at the core of the complaint in the sense I believe the court intends - it is not of sufficient importance in proportion to the rest of the complaint to justify consolidation.

Finally, given the allegations in the union's original complaint - that after it unilaterally "suspended labour relations" management became culpable under the Act for continuing to manage - I have considerable difficulty not treating cynically the union's claim that consolidation would result in the efficient use of the Tribunal's resources. It seems to me there are better ways of achieving that end in relation to these particular complaints.


R.J. Gallivan



Ontario Public Service
**Labour
Relations
Tribunal**

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T/0094/92

IN THE MATTER OF A COMPLAINT

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

Ontario Public Service Employees Union

Complainant

- and -

The Crown in Right of Ontario
(Ministry of Correctional Services)

Respondent

BEFORE:

G. McKechnie
M. Sullivan
B. Gallivan

Vice-Chairperson
Member
Member

**FOR THE
COMPLAINANT:**

D. Wright
Counsel
Ryder, Whitaker, Wright & Chapman
Barristers & Solicitors

**FOR THE
RESPONDENT:**

M. Fleishman
Counsel
Crown Law Office Civil
Ministry of the Attorney General

HEARING:

June 23, 1993

This case concerns a complaint under Section 32 of the Crown Employees Collective Bargaining Act, R.S.O. 1980 c. 108 (Act). The Union complains that the grievor, Mr. Eben Inkumsah, has been dealt with, by the Respondent Employer, contrary to provisions of Sections 29(2)(a) and 29(2)(c) of the Act.

Briefly, the relevant facts for this interim decision are as follows:

- 1) Mr. Inkumsah was dismissed from his employment as an unclassified correctional officer on May 15, 1991.
- 2) The dismissal was found to be without just cause by a panel of the Ontario Crown Employees Grievance Settlement Board in a decision dated October 14, 1992.
- 3) The panel reinstated the grievor for the remainder of his contract.
- 4) The grievor's contract of employment has not been renewed.

The grievor had three contracts as an unclassified correctional officer: the first began October 1, 1990 and ended March 31, 1991; the second began April 1, 1991 and was to have ended June 30, 1991; however the grievor was dismissed on May 15, 1991; the third contract began December 17, 1991 and ended January 31, 1992. The decision of the Grievance Settlement Board, File No. 968/91, found, in part, as follows:

"On the evidence before us there is sufficient doubt that we are compelled to conclude that the allegations against Mr. Inkumsah have not been established. Accordingly, it is our conclusion that just cause for the termination of Mr. Inkumsah's employment has not been established." (p. 24-25)

The Ministry put forward a preliminary objection that the Tribunal

was without jurisdiction to hear the merits of this complaint. The Ministry argued that Mr. Inkumsah was appointed pursuant to Section 8 of the Public Service Act R.S.O., 1980 c. 418, as amended which states as follows:

A minister or any public servant who is designated in writing for the purpose by him may appoint for a period of not more than one year on the first appointment and for any period on any subsequent appointment a person to a position in the unclassified service in any Ministry over which he presides.

The Ministry argued that Section 9 of the Public Service Act was the basis for its preliminary objection. That section states as follows:

A person who is appointed to a position in the public service for a specified period ceases to be a public servant at the expiration of that period.

It is the Ministry's argument that it does not require any action at the end of a contract to sever the employment relationship. The Ministry stated that there was no dispute that the grievor, Mr. Inkumsah was told that his contract would not be renewed; however, it is the Ministry's position that meetings with the grievor were unnecessary and, in any event, once the end of the contract was reached, the grievor ceased to be an employee. The Ministry argues that its decision, therefore, is not the reason for the severance of an employee relationship, rather it is the termination date of the contract.

The Ministry argued that it would be instructive for the Tribunal to review the powers and jurisdiction of the Grievance Settlement Board (GSB). It argued that the GSB had broad jurisdictional powers under Section 19 of the Crown Employees Collective Bargaining Act. Further, under Section 18 of that Act, the GSB can

hear discipline and dismissal complaints. However, it is the Ministry's argument that the GSB has consistently refused to hear the merits of cases concerning the non-renewal of contracts because such actions are taken pursuant to Section 9 of the Public Service Act. The Ministry argued that a non-renewal is not a refusal to employ an individual, which is the language used in Section 29(2)(a) of the Act and further, the Ministry argues that the reason for non-renewal is irrelevant. The Ministry referred the Tribunal to cases from the GSB which supported its contention that the non-renewal of a contract was not the same as a dismissal.

The Union argued that the GSB and Tribunal are different and at the outset, asked the Tribunal to presume that the Union would be able to prove its case if the merits were heard. The Union argued that Section 29(2)(a) of the Act provided the jurisdiction for the Tribunal to hear the merits of the instant case. That Section states as follows:

29(2) - The employer or any person acting on behalf of the employer shall not,

- (a) refuse to employ or to continue to employ or discriminate against a person with regard to employment or any term or condition of employment because the person is exercising any right under this Act or is or is not a member of an employee organization.

It is the Union's argument that the prohibition against refusal to employ does not say, "shall not dismiss". It is the Union's contention that in this instance, the Ministry refused to continue to employ Mr. Inkumsah and further, the Union alleges that the reason for the refusal to employ was because the grievor exercised his rights under the Act. It is the Union's contention that the jurisdiction of the GSB does not contain the same language. It is the Union's view that a refusal to implement the Grievance

Settlement Board's decision, reinstating Mr. Inkumsah, forces a review of Section 29(2)(c) of the Act which concerns the, "intimidation, by threat of dismissal", to force an employee to cease exercising his/her rights. The Union also argues that Section 32(4)(a) contains both the phrase, "refused employment" and "discharge". It is the Union's view that because Section 32(4)(a) contains both phrases, there must be a difference and it is the Union's argument that the Ministry refused to employ Mr. Inkumsah. Further, the Union argues that Section 32(4)(a) of the Act allows the Tribunal to reinstate the grievor but also to fashion a remedy which includes hiring the grievor. As a result, it is the Union's view that the Tribunal can create an employment relationship if the Employer's refusal to employ the grievor is for an improper motive. The Union argues that there are no exceptions for unclassified employees contained within the Act. It is the Union's argument that the Tribunal's powers are broader than those of the GSB and agrees that the GSB is constrained by Sections 18(2) and 19(1), whereas the Tribunal has no such restrictions. Whereas the GSB under Section 19(3) can substitute a penalty, the Tribunal can order the Employer to hire someone. The Union argues that an employee must be able to exercise his/her rights without fear of intimidation and that it is not asking the Tribunal to order that there be a right to employment but order that the grievor has a right to be considered for employment.

The Tribunal has considered the arguments put forward by both parties and the cases submitted in support of those arguments. With respect to the Employer's cases, these are cases which stand for the proposition, and the Grievance Settlement Board has found, that a non-renewal does not constitute a dismissal. In the case of Mr. Mirko Humeniuk, File 614/84 (December 5, 1985), the Board reaches the conclusion at page 9 that: "... an employee whose contract is not renewed has not thereby been 'dismissed'..." In Peter H. Henderson, File 506/85 (May 9, 1986), the Board found: "There is no provision in the Collective Agreement, or in the

Public Service Act or the Crown Employees Collective Bargaining Act that compels an Employer to renew a term contract of employment." (p. 9). In Morris Cascagnette, File 1246/85 (September 2, 1986), the Board found that a non-renewal of an employee's contract in the un-classified service was not a dismissal (p. 8). In P. Shipley, File 223/86 (November 10, 1987), the Board found that the non-renewal of a contract did not come within Section 18(2) of the Act (p. 4). Further, the Board found that it could only look at Section 18(2) of the Act (p. 8). The Ministry submitted three additional cases: Healey, File 485/88 (June 6, 1989); Mitchell, File 340/88 (December 7, 1989) and Milks, File 1000/92 (March 11, 1993) which stood for the proposition that the Grievance Settlement Board was not able to take jurisdiction, even in cases of bad faith, because the non-renewal of a contract was not a dismissal.

The Union referred the Tribunal to Re: Samuel Cooper and Co. Ltd. and International Ladies Garment Workers Union et al O.R. 841 (1973), in which the Court reported at p. 846 that Tribunals created by statute, should have the necessary powers to achieve the intended results unless their powers were specifically limited. In Re: Regina v. Ontario Public Service Employees Union et al 35 O.R. (2d), 670 the Court found that the Grievance Settlement Board had the power to award a job to the grievor and that to find that the Board could not award a job unless there was language in the collective agreement was not appropriate (p. 675-676). In Re: Ontario Public Service Employees Union and David Anderson et al, Divisional Court, September 21, 1990, the Court heard a case which arose out of a "Berry" decision (Ontario Public Service Employees Union and Berry v. Ontario Ministry of Community and Social Services (1985), 15 o.a.c. (15)). The Court held that if a classification was wrong, the Grievance Settlement Board must correct it and there should be broad remedial powers (p. 6). The Union also referred the Tribunal to File T/0055/89, Derek Miller (May 29, 1990) in which the Tribunal found that a penalty had been imposed which was: ".... to deter employees from exercising their

rights under the Act..." (p. 10). The Union argued that this case confirmed its argument that if a right is exercised for improper reasons, the Tribunal can fashion an order requiring the right to be exercised properly. Finally, the Tribunal was referred to an earlier case, Frank Drea, File T/7/84, (August 31, 1984) in which the Tribunal found as follows:

"It is the duty and obligation of the employer to comply with the decisions of the G.S.B. and it is the right of the employee to have compliance in the customary and historical sense." (p. 16).

The Ministry in the instant case argued that the Drea case showed a blatant disregard of a G.S.B. award; however, it argues that is not the situation before the Tribunal with Mr. Inkumsah. Also, the Ministry argued that the Union's cases dealt with remedy if the merits were heard and the Ministry was arguing that its preliminary objection would prevent the Tribunal from hearing the merits.

The Tribunal finds that it does have jurisdiction to hear Mr. Inkumsah's complaint. The Grievance Settlement Board and Tribunal have been given different jurisdictions within the Crown Employees Collective Bargaining Act. Section 39 of the Act establishes the Tribunal's jurisdiction as follows:

The Tribunal has exclusive jurisdiction to exercise the powers conferred upon it by this Act and determine all questions of fact or law that arise in any matter before it, and, except as otherwise provided in this Act, the action or decision of the Tribunal thereon is final and binding for all purposes, but nevertheless, the Tribunal may at any time, if it considers it advisable to do so, reconsider any decision, order, direction, declaration, or ruling made by it and vary or revoke any such decision, order, direction, declaration or ruling.

The parties properly pointed out the Sections of the Act which

determine the Grievance Settlement Board's powers and the Tribunal's powers. In Section 19 of the Act, the Grievance Settlement Board is given power to decide on the arbitration of disputes as follows:

19(1) - Every collective agreement shall be deemed to provide that in the event the parties are unable to effect a settlement of any differences between them arising from the interpretation, application, administration or alleged contravention of the agreement, including any question as to whether a matter is arbitrable, such matter may be referred for arbitration to the Grievance Settlement Board and the Board after giving full opportunity to the parties to present their evidence and to make their submissions, shall decide the matter and its decision is final and binding upon the parties and the employees covered by the agreement.

Further, Article 18(2) of the Act states as follows:

(2) - In addition to any other rights of grievance under a collective agreement, an employee claiming,

- (a) that his position has been improperly classified;
- (b) that he has been appraised contrary to the governing principles and standards; or
- (c) that he has been disciplined or dismissed or suspended from his employment without just cause,

may process such matter in accordance with the grievance procedure provided in the collective agreement, and failing final determination under such procedure, the matter may be processed in accordance with the procedure for final determination applicable under section 19.

These two sections are different than Section 29(2) which uses the phrase, "refuse to employ", supra at p. 4, or Section 32(4)(a) which indicates as follows:

- (a) - If the Tribunal is satisfied that the person concerned has been refused employment, discharged,

discriminated against, threatened, coerced, intimidated, or otherwise dealt with contrary to this Act as to his employment, opportunity for employment or conditions of employment by the employer or by any person or employee organization it shall determine what, if anything, the employer, person or employee organization shall do or refrain from doing with respect thereto, and such determination may include the hiring or reinstatement in employment of the person concerned with or without compensation or compensation in lieu of hiring or reinstatement for loss of earnings and other employment benefits for which compensation may be assessed against the Employer, person or employee organization, jointly or severally, and the employer, person or employee organization shall, notwithstanding the provisions of any collective agreement, do or abstain from doing anything required of them or any of them by the determination.

The Tribunal agrees that if the contract for an unclassified employee reaches the date of maturity or termination, a simple failure to renew the contract does not constitute a dismissal. The Grievance Settlement Board cases cited supra attest to that proposition. Further, the Tribunal agrees with the parties that the Grievance Settlement Board, properly, has declined jurisdiction to hear such cases because it must act pursuant to Section 18 and Section 19 of the Act and, as already indicated, the Tribunal finds that these are markedly different than Sections 29 and 32 of the Act. In other words, it is the Tribunal's decision that the Grievance Settlement Board has a narrow term of reference when it makes its decision pursuant to Section 18 and Section 19 of the Act whereas the Tribunal has a broad term of reference. Also Section 29(2)(a) (supra) contains a modifier to the Employer's behaviour. Whereas the Grievance Settlement Board uses a test of just cause in the matter of dismissal, the Tribunal pursuant to Section 29(2)(a) must decide if the Employer has refused to employ or continue to employ a person, "... because the person is exercising any right under this Act..." (supra). In other words, the Tribunal's jurisdiction is much broader than that of the Grievance Settlement Board. The Tribunal's decision to hear the merits of the instant case is based on its jurisdiction to inquire into whether or not a

refusal to employ Mr. Inkumsah was for the reasons cited by the Union and that is because he exercised his rights under the Act and lodged a grievance with the Grievance Settlement Board, which grievance was successful.

The Ministry agreed with the Union's request that should the Tribunal decide it had jurisdiction to hear this matter, the complaint should be amended to include Section 29(2)(c) and the Tribunal therefore amends the complaint since it has found it does have jurisdiction to hear the merits of this case.

Dated at Toronto, this 29th day of September, 1993.


Graeme H. McKechnie, Vice Chair

I concur (Addendum attached)


B. Gallivan, Employer Member

I concur


M. Sullivan, Employee Member

ONTARIO PUBLIC SERVICE LABOUR RELATIONS TRIBUNAL

File #T/0094/92

DECISION OF R. J. GALLIVAN

I agree that the Tribunal has jurisdiction to hear Mr. Inkumsah's allegation that he was refused employment for a reason contrary to Section 29(2)(a) and (c) of the Act. However, I find the complaint filed on his behalf by the union to be almost totally deficient in meeting the requirements of the Act for particulars. Regulation 31(1) states, in part:

31.(1) Where a person intends to allege, at the hearing of an application or complaint, improper or irregular conduct by any person, he shall

(a) include in the application or complaint;

or

(b) file a notice of intention that shall contain,

a concise statement of the material facts, actions and omissions upon which he intends to rely as constituting such improper or irregular conduct, including the time when and the place where the actions or omissions complained of occurred and the names of the persons who engaged in or committed them....

The fundamental purpose of that Regulation of course is to let the respondent know exactly what it is with which he or she is being accused so as to afford adequate opportunity to prepare a defense. A lesser but nonetheless important reason is to expedite the hearing process - thus conserving resources of complainants, respondents and the Tribunal - by confining adjudication to the matters alleged in the complaint.

The Regulation requiring particulars is also designed to prevent abuse of the Act's processes. A complainant dissatisfied with some legally-binding decision to which he or she might have

been subjected elsewhere, unwilling to accept the personal consequences of some valid rule affecting the employment relationship, made a pawn in some union attempt to gain through litigation what it has failed to achieve in bargaining, or who simply doesn't like the boss, cannot "go on a fishing expedition" under the Act in the hope of tripping up some witness or using some carelessly made or ambiguous statement as proof of malfeasance. If a complainant has reasonable grounds (not just a hope that something will turn up, but valid grounds) for a complaint, then the Regulations require that the "what, when and where" of the impugned actions be specified.

In my view, the complaint filed in this case lacks those essential particulars and therefore raises the suspicion that it is sufficiently lacking in merit that the union is simply raising allegations in the hope that something sticks to someone, somewhere.

Rx Salomon



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T/0005/93-1

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T/0005/93

IN THE MATTER OF AN APPLICATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

Ontario Public Service Employees Union

Applicant

- and -

North Leeds Volunteer Ambulance Service Inc.

Respondent

BEFORE:

G. McKechnie
M. Sullivan
B. Gallivan

Vice-Chairperson
Member
Member

**FOR THE
APPLICANT:**

L. Patterson
Ontario Public Service Employees Union

**FOR THE
RESPONDENT:**

C. Lloyd
North Leeds Volunteer Ambulance Inc.

INTERIM DECISION

1. This is an application for representation rights. The application is dated March 25, 1993 and the terminal date was April 29, 1993.

2. The Applicant has requested that a pre-hearing representation vote be taken.

3. Having regard to the agreement of the parties, the Tribunal determines the following voting constituency:

All employees of the North Leeds Volunteer Ambulance Service Inc. in the Village of Elgin Township of South Crosby, save and except supervisors, persons above the rank of supervisor, students employed during school vacation periods and/or on a cooperative education training program.

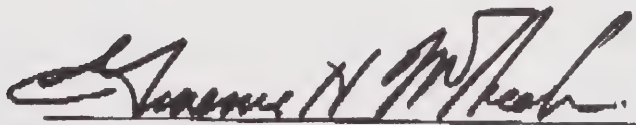
4. Upon an examination of the records of the employee organization and the employer, it appears to the Tribunal that not less than 35 per cent of the employees in the voting constituency were members of the employee organization at the time the application was made.

5. Accordingly, the Tribunal directs that a representation vote be taken among the employees in the voting constituency.

6. The Tribunal further directs that the ballot box containing the ballots cast in the representation vote be sealed and the ballots not counted until the parties have been given full opportunity to present their evidence and make their submissions.

7. The matter is referred to the Registrar.

Dated at Toronto, this 12th day of May 1993



Graeme H. McKechnie, Vice-Chair



M. Sullivan - Member



B. Gallivan - Member



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T/0005/93-2

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T/0005/93

IN THE MATTER OF AN APPLICATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

Ontario Public Service Employees Union

Applicant

- and -

North Leeds Ambulance Service

Respondent

BEFORE:

G. McKechnie
M. Sullivan
B. Gallinvan

Vice-Chairperson
Member
Member

FOR THE
APPLICANT:

S. White
Counsel
Gowling, Strathy & Henderson
Barristers & Solicitors

FOR THE
RESPONDENT:

C. Lloyd
North Leeds Volunteer Ambulance Service Inc.

DECISION

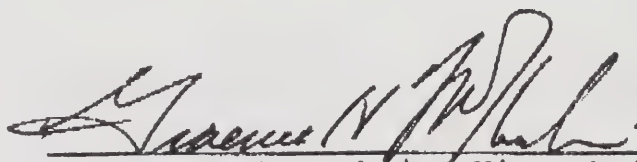
1. By Interim Decision dated May 12, 1993, the Tribunal ordered a pre-hearing representation vote to be taken of the voting constituency set out in the application for Representation Rights.

2. The vote was held May 21, 1993, and the parties agreed to and signed an agreement with respect to the bargaining unit. The parties also agreed to an immediate counting of the ballots cast in the representation vote.

3. Having regard to the fact that more than fifty percent (50%) of the ballots cast in the representation vote were cast in favour of the Applicant, and having regard to the fact that the parties agreed to the bargaining unit, the Tribunal hereby confirms that representation rights are granted to the Applicant with respect to the bargaining unit described in paragraph 3 of the Interim Decision of the Tribunal dated May 12, 1993.

4. The Registrar is directed to destroy the ballots cast in the representation vote no earlier than thirty (30) days from the date of this decision unless representations to the contrary are received from any party.

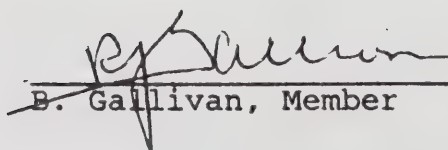
DATED AT TORONTO this 7th day of July, 1993.



Graeme H. McKechnie, Vice-Chair



M. Sullivan - Member



B. Gallivan, Member



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T/0025/93

IN THE MATTER OF AN APPLICATION
Under
THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT
Before
THE LABOUR RELATIONS TRIBUNAL

Between:

Ontario Public Service Employees Union

Applicant

- and -

The Crown in Right of Ontario
Bolton & District Voluntary Ambulance Association

Respondent

BEFORE:

G. McKechnie
M. Sullivan
D. Guptill

Vice-Chairperson
Member
Member

FOR THE
APPLICANT:

S. White
Counsel
Gowling, Strathy & Henderson
Barristers & Solicitors

FOR THE
RESPONDENT:

E. Keenan
Counsel
Mathews, Dinsdale & Clark
Barristers & Solicitors

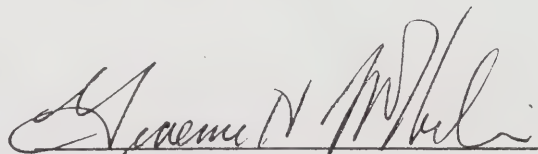
HEARING:

June 2, 1993

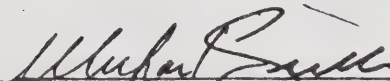
INTERIM DECISION

1. The employer filed an application pursuant to s. 40(1) of the Crown Employees Collective Bargaining Act, R.S.O. 1980, c.108, as amended, (Act) to determine whether Dianne Nordeheimer, Secretary Treasurer of Bolton & District Voluntary Ambulance Association, is an "employee" for purposes of the Act.
2. The Tribunal began a hearing into this matter June 2, 1993, and has decided as follows:
 - (a) An inquiry Officer is to be appointed to hear evidence of the duties of Dianne Nordeheimer and to hear evidence from anyone with whom the Employer alleges she has a confidential relationship and;
 - (b) The proceedings before the Inquiry Officer shall be transcribed and the Applicant and Respondent shall share the cost of the transcription and;
 - (c) The Tribunal shall remain seised should the parties be unable to reach an agreement on the matter of Dianne Nordeheimer, pursuant to paragraph (a), (supra), and will hear the application pursuant to s. 40(1) of the Act on November 10, 1993, beginning at 10:30AM.

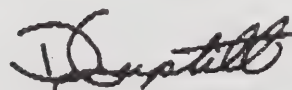
Dated this 10th day of June, 1993 at Toronto, Ontario



Graeme H. McKechnie, Vice Chair



Michael Sullivan, Member



David Guptill, Member



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T/0027/93

IN THE MATTER OF AN COMPLAINT

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

Azim Babu Ramji

Complainant

- and -

Laura Koch
(Metropolitan Toronto Convention Centre)

- and -

Daniel Serbin
(Textile Processors, Service Trades, Health Care, Professional
and Technical Employees International Union, Local 351A)

Respondent

BEFORE:

R. Abramsky
M. Sullivan
B. Gallivan

Vice-Chairperson
Member
Member

**FOR THE
COMPLAINANT:**

A. Ramji

**FOR THE
RESPONDENT:**
(Koch & MTCC)

R. MacDermid
Counsel
Kerzner, Papazian, MacDermid
Barristers & Solicitors

**FOR THE
RESPONDENT:**
(Serbin &
Textile etc.)

M. Church
Counsel
Caley & Wray
Barristers & Solicitors

HEARING:

August 27, 1993

DECISION

On May 25, 1993, a complaint under the *Crown Employees' Collective Bargaining Act* ("*CECBA*" or "*Act*") was filed by Azim Babu Ramji, an individual employee, against Laura Koch, an employee of the Metropolitan Toronto Convention Centre Corporation ("Convention Centre"), and Daniel Serbin, Business Representative of the Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351A ("Union"). On August 27, 1993, a hearing on this complaint was held before the Tribunal. At the commencement of that hearing, both Respondents, as well as the Convention Centre and the Union¹, moved to dismiss the complaint for failure to state a proper claim under the *Act*. That motion was fully heard and Complainant Ramji, who represented himself in this proceeding, was given several opportunities to more fully state and argue the basis of his claim under the *Act*. At the conclusion of the hearing, we determined that the Respondents' motion to dismiss had merit and dismissed the complaint. This Decision more fully sets forth the basis for that ruling.

A. The Complaint

The complaint, as handwritten on Form 28, alleges violations of Sections 66, 68, 73, 78, 89 and 91 of the *Act*. Clearly, however, those sections do not pertain to the *CECBA* and relate, instead, to the Ontario *Labour Relations Act*.² In light of the fact that the Complainant was not represented by counsel, we will treat the complaint as alleging the corresponding provisions of *CECBA*, specifically Sections 29(2)(a) and (c) and 29(3)

¹ Both the Metropolitan Toronto Convention Centre Corporation and Union sought leave to be added as additional Respondents to this matter. That motion was granted at the hearing.

² Originally, the Complainant had filed a complaint under the Ontario *Labour Relations Act*, citing the same sections of that statute. That claim was withdrawn after the Complainant was instructed that the Metropolitan Toronto Convention Centre was subject to the *Crown Employees Collective Bargaining Act*. The claim was then refiled under *CECBA* but the pertinent statutory provisions were not corrected.

(as against Ms. Koch and the Convention Centre) and Section 30 (against Mr. Serbin and the Union).

Sections 29(2)(a) and (c) of the *Act* provide as follows:

29 (2) The employer or any person acting on behalf of the employer shall not:

(a) refuse to employ or to continue to employ or discriminate against a person with regard to employment or any term or condition of employment because the person is exercising any right under this Act or is not a member of an employee organization;

(c) seek by intimidation, by threat of dismissal or by any other kind of threat or by the imposition of a pecuniary or any other penalty or by any other means to compel an employee to become or refrain from becoming or to continue or cease to be a member of an employee organization, or to refrain from exercising any other right under this Act; ...

Section 29(3) of the *Act* provides as follows:

(3) No person or employee organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of an employee organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.

Section 30 of the *Act* provides as follows;

An employee organization shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees, whether members of the employee organization or not.

The remaining *Labour Relations Act* provisions cited in the complaint, however, would appear to have no relevance to what is alleged in the complaint, specifically Sections 73, 78, 89 and 91.³ They are therefore dismissed.

The Complaint, as completed by the Complainant, sets forth several allegations. It is clear from the complaint, as well as the Complainant's statements at the hearing, that English is not his first language and consequently, we find it best to paraphrase his Complaint. Essentially, Complainant Ramji alleges that he was dismissed from his position as a casual banquet waiter without just cause. He states that there was a patron complaint about him on or about January 10, 1993, but asserts that it was a "set up." He asserts that Ms. Koch, from the Human Resources Department of the Convention Centre, was later at a party at the Sheraton Centre Hotel and made fun of him - "making all kinds of jokes, dancing, making monkey face to me all night" - and then had the Front Manager send him home.

The Complainant asserts that he then contacted the Union to file a grievance for him and that the Union informed him that there would be no chance of winning a grievance and that they would not proceed to arbitration. No further action was taken, he alleges, because of the "Union['s] belief that the grievance could not be won at the arbitration..." He asserts that the Union's failure to take this grievance is "favourisam (sic), unfair & unjustise (sic), too." He asserts that he is a casual employee, with no seniority rights, but that he is "paying [the] same union due[s] as same (sic) full-time employees." (Exhibit 1)

³ Section 73 of the Ontario *Labour Relations Act* pertains to an employee who has engaged in a lawful strike and makes an unconditional application for reinstatement within six months of the strike. Section 78 prohibits a trade union from penalizing a member because he has refused to engage in or continue to engage in an unlawful strike. Section 89 deals with enforcement of the Ontario *Labour Relations Act*. Section 91 deals with jurisdictional disputes. None of these provisions have any relevance to matters alleged in the complaint.

B. The Facts

The facts presented at the hearing, which were not disputed, show that the Complainant worked as a casual banquet waiter for the Metropolitan Toronto Convention Centre. That means that his name was on an "on-call" list and he would be called-in to serve functions as needed. Under the collective agreement between the Convention Centre and the Union, Schedule "F" entitled "Banquet Department", Section F.01(c), a "casual banquet employee" is defined as follows:

(c) Casual banquet employee is a person who works as needed on a call in basis by function and is employed under an arrangement whereby he or she may elect to work or not for a temporary period when requested so to do. He or she shall be deemed to have been hired for each function worked and terminated at the end thereof.

The bargaining unit, as defined in Article 2 of the collective agreement, does not include casual banquet employees and the benefits, terms and conditions of the collective agreement including the grievance arbitration procedure, except for Schedule "F", also do not appear to pertain to casual employees. Under Article 2.05, however, "[a]ll Casual and Part Time Employees shall pay Union dues once the Union provides for a percentage of earning formula for such dues."

It is undisputed that in January 1993, a patron at the Convention Centre complained in writing about the service she received from the Complainant. As a result, the Convention Centre decided to place the Complainant at the bottom of the on-call list. While the Complainant characterizes this action as a "dismissal", that characterization is denied by the Convention Centre. The net result of the change, however, together with slow Convention Centre business has been to substantially reduce, if not eliminate, the

amount of work received by the Complainant. It is this action which the Complainant contends was taken without just cause.

The Complainant subsequently went to the Union about what had occurred. Despite some reservations about arbitrability in light of the Complainant's casual employee status, the Business Representative Serbin prepared a grievance on the Complainant's behalf, alleging "unjust layoff: Human Rights violation." (Exhibit 2). This grievance was signed by the Complainant and on March 11, 1993, Serbin wrote to the Registrar of the Grievance Settlement Board requesting that the grievance be processed "as expeditiously as possible." (Exhibit 8)

A pre-hearing meeting with a mediator from the Grievance Settlement Board took place on May 11, 1993. All of the parties were present, including the Complainant, the Union, and the Convention Centre. Each party explained their respective positions but the matter was not resolved.

Following the pre-hearing meeting, on May 13, 1993, counsel for the Union, Michael Church, sent the Complainant a letter which outlined the proceedings to date and noted, among other things, the Union's concerns about the merits of his case. The Complainant was advised that a meeting of the Union's Grievance Committee would take place on May 17, 1993 to determine if his grievance should proceed to arbitration and he was urged to attend that meeting. (Exhibit 10)

The following day, May 14, 1993, counsel Michael Church sent an opinion letter to the Union assessing the merits of the Complainant's grievance. (Exhibit 11). In that opinion letter, Church concluded the grievance presented numerous procedural and substantive difficulties and concluded that even if the Union could overcome all of those

difficulties, it was unlikely that the Grievance Settlement Board would award the relief sought by the Complainant. He therefore determined that there was little to be gained by pursuing the matter to arbitration.

The May 17, 1993 meeting of the Union's Grievance Committee was attended by the Complainant. Business Representative Serbin argued the case for the Complainant and the Complainant was allowed to address the Committee. The Committee also considered the May 14, 1993 opinion letter from Mr. Church. The Committee subsequently determined not to proceed to arbitration with the grievance and the Complainant was so advised. (Exhibit 13)

The instant complaint before the Tribunal followed. At the time of the hearing in this matter, Complainant's grievance was still pending before the Grievance Settlement Board and was scheduled for hearing on September 16, 1993. The Union stated, however, that unless it was ordered to proceed with the grievance by the Tribunal, it intended to withdraw the grievance. The Union stated that it would do so because the grievance, in its view, lacked merit and it was concerned about the impact that an adverse arbitration decision would have on the bargaining unit.

Under the Local Union's constitution, it is the Business Manager of the local union that controls the grievance, not the individual grievor. Article VI, Section 6.02(c) of the Local Union constitution provides, in part, as follows:

6.02 ... The Business Manager is hereby empowered in addition to such other general powers conferred herein, or by law, to:

...

(c) On behalf of the Union, to initiate, defend, compromise, settle, arbitrate or release or to pay the expenses and costs of any legal proceedings or actions of any nature if, in his judgment, it shall be

necessary or desirable in order to protect, preserve, or advance the interests of the organization.

(Exhibit 18)

Likewise, Article XIV, Section 3 of the constitution of the International Union states that every member authorizes the Local Union to do as follows:

[T]o act for him and have final authority in presenting, processing and adjusting any grievance, difficulty or dispute arising under any collective bargaining agreement or out of his employment with such employer in such manner as the Local Union or its officers deem to be in the best interests of the Local Union.... The Local Union and its officers, business representatives and agents may decline to process any grievance, complaint or difficulty or dispute if in their reasonable judgment such grievance, complaint or dispute lacks merits....

(Exhibit 17)

On August 4, 1993, the parties met with a Tribunal Labour Relations Officer in an attempt to resolve this matter. During that meeting, the Respondents formally requested that the Complainant provide them with particulars of his allegations. That verbal request was followed-up the next day, on August 5, 1993, by the Union with a letter to the Complainant formally requesting that the Complainant provide written particulars of his allegations. (Exhibit 14) That letter specifically mentioned and enclosed a copy of Tribunal Regulation 233 and highlighted Section 31 which sets forth a complainant's obligation to provide particulars. Specifically, Section 31 provides, in part, as follows:

Particulars

31 (1) Where a person intends to allege, at the hearing of an application or complaint, improper or irregular conduct by any person, he shall,

(a) include in the application or complaint; or

(b) file a notion of intention that shall contain,

a concise statement of the material facts, actions and omissions upon which he intends to rely as constituting such improper or irregular conduct, including the time when and the place where the actions or omissions complained of occurred and the names of the persons who engaged in or committed them, but not the evidence by which the material facts, actions or omissions are to be proved, and, where he alleges that the improper or irregular conduct constitutes a violation of any provision of the Act, he shall include a reference to the section or sections of the Act containing such provision.

...

(3) Where a statement in an application or complaint or in any document in respect of the application or complaint is so indefinite or incomplete as to hamper any person in the preparation of his case, the Tribunal may, upon the request of the person made promptly upon receipt of the application, complaint, or document, direct that the information stated be made specific or complete and, if the person so directed fails to comply with the direction, the Tribunal may strike the statement from the application, complaint or document.

(4) No person shall adduce evidence at the hearing of an application or complaint of any material fact that has not been included in the application or complaint or in any document in respect of the application or complaint, except with the consent of the Tribunal and, if the Tribunal considers it advisable to give such consent, it may do so upon such terms and conditions as it considers advisable.

Counsel for the Union also sent a letter on August 5, 1993 to the Registrar of the Tribunal requesting that the Complainant provide it with written particulars.(Exhibit 15) A copy of that letter was sent by the Registrar to Complainant Ramji on August 9, 1993. (Exhibit 16)

On August 6, 1993, a similar letter requesting particulars was sent directly to the Complainant by counsel for the Convention Centre. (Exhibit 4). That letter also enclosed a copy of Tribunal Regulation 233 and highlighted Section 31. The Complainant was also advised in that letter that the Convention Centre would seek to dismiss the complaint.

Complainant Ramji did not respond to the Respondents' requests for particulars, although he acknowledged that he had received their requests. At the hearing, Ramji presented a hand-written letter, addressed to the Convention Centre, but which had not been sent out. That letter, which was admitted into the record, did not set forth particulars as to his complaint under the *Act*, but instead provided more detail of his claim for unjust dismissal. (Exhibit 20)

On August 25, 1993, two days before the hearing in this matter, the Union hand-delivered a letter to both the Tribunal and Complainant Ramji again demanding particulars and advising Ramji that the Union would also be moving for dismissal of the complaint at the hearing. (Exhibit 2).

C. The Motions to Dismiss

In support of its motion to dismiss, the Convention Centre contends that the complaint fails to state a *prima facie* case under the *Act*. It asserts that the complaint on its face, or combined with anything alleged by the Complainant at the hearing, fails to state a cognizable claim for relief. It points out that the sections of the *Act* allegedly violated were not even set forth in the complaint, as required, and even if they could be ascertained, there would still be no violation alleged. It argues that the Complainant does not assert that he was terminated for exercising rights guaranteed under the *Act* or because he had engaged in protected union activity. Rather, it contends that the Complainant only asserts that he was terminated without just cause, a claim which does not state a *prima facie* violation of the *Act*. The Convention Centre further argues that even though a lay person ought not to be held to the highest standards of pleading, the allegation made must still tie-in to the *Act*. Here, it contends that despite repeatedly asking for particulars, the

Complainant has failed to allege conduct which, even if true, would violate the *Act* and therefore asserts that the complaint must be dismissed.

The Union also contends that the complaint should be dismissed. The Union asserts that even if the complaint may be read to allege a violation of Section 30 of the *Act*, the complaint fails to allege a *prima facie* violation of the statute. That section, it submits, prohibits action that is "arbitrary, discriminatory or in bad faith" and contends that the Complainant's bald assertion that the Union's decision not to pursue arbitration of the grievance was "favourism (sic), unfair and unjustise(sic)" is insufficient to state a claim for relief. That bold allegation, it argues, was not supported by any particulars, despite repeated requests, and is contradicted by the facts which show that the Union made a good faith, reasoned determination that the grievance should not be further pursued. The Union further contends that the only other basis asserted by the Complainant - that he pays Union dues and is therefore entitled to arbitration of his grievance - fails to allege a violation of Section 30 of the *Act*.

At the hearing, Complainant Ramji was given several opportunities to present additional information about his claim under the *Act*. In regard to his claim against the Convention Centre, he stated that he believed that his dismissal was unjust because he had worked as a casual banquet waiter for seven years and was terminated after one patron complaint. This, he contended, was unjust. In regard to his claim against the Union, he stated that he paid the same Union dues as full-time employees and was entitled to have his claim of dismissal heard before an arbitrator.

D. Analysis

As noted at the outset, we determined at the conclusion of the hearing to dismiss the complaint. We did so because we determined that the complaint, as written and explained by the Complainant at the hearing, fails to allege a *prima facie* violation of the *Act* against any of the Respondents.

1. Claim Against the Convention Centre

In *Glenny & Gondor and The Crown in Right of Ontario (Ministry of Government Services) and Ontario Public Service Employees Union*, T/0008/87 (Devlin, Vice-Chair), the Tribunal addressed the standard that a complainant must meet to overcome a motion to dismiss. The Tribunal stated at pp. 6-7:

The first issue for determination, then, is whether the conduct in which the Ministry and the Union are alleged to have engaged could, if proven, constitute a violation of the Crown Employees Collective Bargaining Act. If the complaint contains no statement of material fact which could involve such a violation, then the Tribunal is without jurisdiction to entertain the complaint and it must be dismissed.

Accord, Ontario Public Service Employees Union (John Waggoner) and The Crown in Right of Ontario (Ministry of Correctional Services), T/0003/86 (Devlin, Vice-Chair)

Applying this standard to the facts before us in this case, we conclude that the complaint does not allege conduct by the Convention Centre or Ms. Koch which could, if proven, constitute a violation of the *Act*. The complaint alleges that the Convention Centre dismissed Complainant Ramji without just cause. There is no allegation that Ramji had exercised or sought to exercise any rights guaranteed under the *Act*, nor any allegation

that the Convention Centre "dismissed" him (assuming, for the moment, that what occurred was a "dismissal") because of Ramji's attempt to exercise any rights guaranteed by the *Act*. Likewise, there is no allegation that the Convention Centre acted against Ramji for becoming or not becoming a member of the Union. In the absence of such allegations, the complaint fails to state a claim for relief under the *Act*.

The claim of unjust dismissal, standing alone as it does here, simply does not contain a statement of material fact which could establish a violation of the Act. The Tribunal's jurisdiction does not extend to determinations of "just cause" without some connection to rights guaranteed under *CECBA*. The Tribunal's role is to enforce the statutory rights guaranteed by *CECBA*, not determine if an employer, generally, has just cause to discharge an employee. Accordingly, we are without jurisdiction and the complaint against Ms. Koch and the Convention Centre is dismissed.

In so ruling, we note that Complainant Ramji had ample opportunity to provide further particulars before the hearing as well as at the hearing. He was on notice from both parties that particulars were needed and that motions to dismiss his complaint would be presented at the hearing. Although he stated that he had discussions about this matter with a lawyer, he chose not to have a lawyer attend the hearing and chose to represent himself. Consequently, under the particular facts and history of this case and the full opportunity that the Complainant has had to state his claim, we determine that dismissal of the complaint is appropriate.

2. Claim against the Union

The sum and substance of Complainant Ramji's complaint against the Union is that the Union's determination not to proceed to arbitration with his grievance is "favourism

(sic), unfair & unjustise (sic), too." The complaint further states, however, that the Union's decision not to proceed was "[d]ue to the Union['s] belief that the grievance could not be won at the arbitration...." It also asserts that he is "paying [the] same union dues[s] as same (sic) full-time employees." When questioned by the Tribunal as to why the Union's refusal to proceed to arbitration was unfair and unjust, Ramji repeatedly answered that he paid Union dues and was entitled to have his claim heard at arbitration.

In our view, the complaint as written and explained at the hearing fails to allege conduct by the Union or Mr. Serbin which could, if proven, constitute a violation of the *Act*. It states no statement of material facts which could constitute a violation of the *Act*. The mere assertion that the Union's determination not to proceed to arbitration was unfair and unjust or an act of favoritism, without more, is insufficient to state a claim under *CECBA*.

Section 30 of the *Act* states that the Union "shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees, whether members of the employee organization or not." A similar provision exists under the Ontario *Labour Relations Act*. The jurisprudence under both statutes establishes that a union need not take each and every grievance to arbitration. Rather, the union's obligation is simply not to act in a manner that is arbitrary, discriminatory or in bad faith.

The scope of a union's duty of fair representation under Section 30 of the *Act* was explored by Chairman Owen Shime in *Mary Hamilton et al. (Ministry of Health and Ontario Public Service Employees Union, T/7/77* (Shime, Chairman). In that case, it was alleged that the Union acted arbitrarily and discriminatorily when the Union, *inter alia*, failed to pursue a grievance on behalf of a number of experienced nurses in the bargaining unit beyond the second step level. The grievance was initiated because, due to an effort to

attract new nurses, trainee nurses were being paid more than some experienced nurses at a facility. The matter was pursued to the second step level and was denied by management on the basis that the regular staff as well as the trainees were paid in accordance with approved pay policies and procedures. The Union determined that there had been no violation of the collective agreement and that the grievances had "no chance of success, since there is no indication that [the nurses] are being treated other than in accordance with the negotiated salary scale." (Decision p. 8). The matter, it determined, would have to be left for future salary negotiations in collective bargaining.

In addressing the arguments raised by the grievors, Chairman Shime reviewed "the responsibility of the union to pursue matters through the grievance procedure and to arbitration." (Decision p. 4). He concluded that there was no obligation to take all grievances to arbitration but rather, the Act only required that the union make a judgment in a non-arbitrary and non-discriminatory manner. As Chairman Shime explained at p. 9:

[The Union representative's] only obligation was to put his mind to the problem at hand and make a judgment in a non-arbitrary and non-discriminatory matter (sic) and this he did. He not only weighed the possibility of success of the grievances but he also weighed the impact of the grievances on other members of the bargaining unit. Having made an assessment he advised against proceeding with the matter. In our view [the representative] satisfied every test and all the standards expected of a bargaining agent in determining whether to proceed with the grievance.

He continued at p. 10:

All that is required is that there be some consideration of the matter and that there be no ulterior motive which might demonstrate arbitrariness, discrimination or bad faith. None of these elements being present, this Tribunal does not find that by failing to pursue the grievance the union violated its duty of fair representation under [the Act.] It gave full consideration to the grievances and decided not to pursue them. That was all it was required to do in the circumstances.

Chairman Shime further concluded that the union has an obligation to act on behalf of the bargaining unit as a whole, not just individual employees. He explained that conclusion, in part, as follows at pp. 5-7:

[O]ne must recognize that unions are involved in collective negotiations or the administration of the collective agreement on behalf of the bargaining unit as a whole. Where employees chose a bargaining agent they surrender their individual rights to bargain and thus the bargaining agent must consider the sum total of the individual interests. Often the interests of one person or a group may not harmonize with the interests of others in the bargaining unit....The job of the bargaining agent is to attempt to delicately balance these competing interest among its membership and often its task is a difficult one. But in the final analysis the bargaining agent engages in collective bargaining on behalf of the "collective" and no single individual or groups are automatically entitled to have his or her position preferred over that of any other individual or group....

...

Thus, while we do not deny that unions should vigorously pursue legitimate grievances we feel that it is not inappropriate for unions to settle and compromise grievances, not only those which may be questionable, but also those which may have a reasonable opportunity of success. These may be resolved not only because they are debatable or because they are subject to the risk of arbitral decision making but also because the pursuit of a single grievance may not advance the interest of the members of the bargaining unit as a whole and indeed may even be injurious to the interests of the bargaining unit or some groups within the unit.....

Accord, Robert H. Wilson and Ontario Public Service Employees Union and the Crown in Right of Ontario (Ministry of Education), T/76/84 (Picher, Chair).

Likewise, in *Robert Evans and The Ontario Liquor Board Employees' Union*, T/8/82, Chairman Shime dismissed a complaint under Section 30 of the *Act* where the union, which had determined that the grievance had little chance of success, failed to represent an employee at an arbitration before the Grievance Settlement Board. The Tribunal concluded that the union's action did not violate the *Act*. It stated at pp. 2-3:

The Union is not a guarantor or insurer for its employees; it must fairly represent them. In this case, the union did everything that was required of it in representing the grievor. It assessed his position and then decided to withdraw its support for the grievor. In this it was supported by a legal opinion. The union is not perfect. It may even be wrong without violating the provisions of the Act. At the very least, the union's conduct in this case was reasonable and accordingly, after assessing all the facts, we determine that the union's conduct as a whole, was not arbitrary.

The jurisprudence of the Ontario Labour Relations Board is to the same effect: the union has no obligation to arbitrate every grievance, including discharge grievances. *See, e.g., Gebbie & Longmoore and United Automobile Workers, Local 200*, [1973] O.L.R.B. Rep. 519 (Shime, Vice-Chair); *Antonio Melillo*, [1976] O.L.R.B. Rep. Oct. 13 (Haladnor, Vice-Chair); *Dixie Canada, Inc.*, [1984] O.L.R.B. Rep. Sept. 1179 (Tacon, Vice-Chair); *Massey-Industries*, [1980] O.L.R.B. Rep. Jan. 49 (Picher, Vice-Chair); *Maria Mlakar*, [1989] O.L.R.B. Rep. Dec. 1246 (Nairn, Vice-Chair).

In this case, all that is alleged is that the Union failed to pursue the Complainant's grievance and that this action was unfair, unjust and an act of favoritism. There is no allegation that the Union ignored the grievance or treated it in a perfunctory manner or that it considered irrelevant factors. There is no allegation that other casual employees were treated differently. There is no allegation of any hostility or ill will towards the Complainant or that the Union acted dishonestly. All that exists is a bald allegation of favoritism, unfairness and injustice. There is nothing in the complaint or that was stated at the hearing which supports that contention or gives it any substance.

The only basis for the Complainant's contention that the Union violated the *Act* is that he has paid union dues like full-time employees and was therefore entitled to have his grievance heard before an arbitrator. Under the relevant case law, however, no employee,

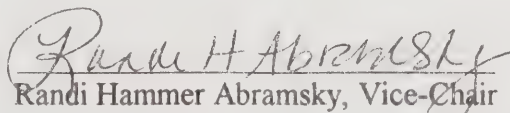
casual or full-time, has a right to have his grievance heard before an arbitrator. The Union has no obligation blindly to carry every grievance through to arbitration at the demand of the grievor. Its only obligation is to give consideration to the matter and make a good faith determination whether or not to proceed to arbitration. That obligation, under the complaint as written by the Complainant and as the facts demonstrate, was met by the Union.

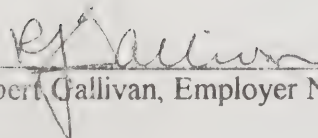
Accordingly, we conclude that the material facts as alleged by the Complainant could not, even if proven, establish a violation of Section 30 of the *Act*. The complaint against Mr. Serbin and the Union is therefore dismissed.

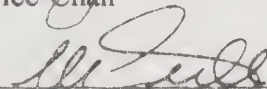
Undoubtedly, the legal process in pursuing this matter first before the Ontario Labour Relations Board and then this Tribunal has been very frustrating for Complainant Ramji. With our ruling, his claim that he has been unjustly terminated will not be heard before an arbitrator. That situation, however, as recognized by Chairman Shime may occur from time to time and is part and parcel of the collective bargaining process as it exists in Ontario. All that the *Act* requires is that the Union exercise its control over the arbitration process in a manner that is not arbitrary, discriminatory or in bad faith. In the absence of such allegations, the Union may legally decide which grievances may proceed to arbitration.

For all of the foregoing reasons, the complaint in its entirety is dismissed.

Dated: 30 day of September 1993


Randi Hammer Abramsky, Vice-Chair


Robert Gallivan, Employer Nominee


Michael Sullivan, Employee Nominee



Ontario Public Service
Labour
Relations
Tribunal

Fonction publique de l'Ontario
Tribunal administratif
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T/0033/93

IN THE MATTER OF A COMPLAINT

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

BETWEEN

Ontario Public Service Employees Union (Local 108)

Complainant

- and -

The Crown in Right of Ontario
(Ministry of the Solicitor General and Correctional Services)

Respondent

BEFORE:

G. McKechnie
M. Sullivan
R. Gallivan

Vice-Chairperson
Member
Member

FOR THE
COMPLAINANT

L. Yearwood
Grievance Officer
Ontario Public Service Employees Union

FOR THE
RESPONDENT

J. Benedict
Manager, Staff Relations & Compensation
Ministry of the Solicitor General and Correctional
Services



Ontario Public Service
Labour
Relations
Tribunal

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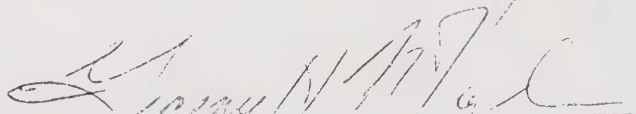
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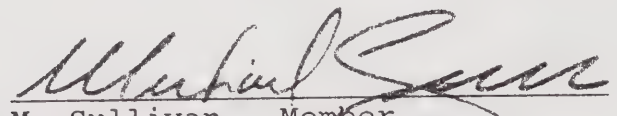
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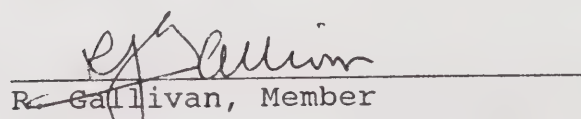
B O A R D O R D E R

Enclosed is an executed Memorandum of Settlement
which the parties agreed would be made an order of the Board.

DATED at Toronto, this 29th day of September, 1993.


G. McKechnie, Vice-Chairperson


M. Sullivan, Member


R. Gallivan, Member

T/0033/93

MEMORANDUM OF SETTLEMENT

BETWEEN:

O. P. S. E. U. and its Local 108
Complainant

- and -

Ministry of Correctional Services and
Solicitor General

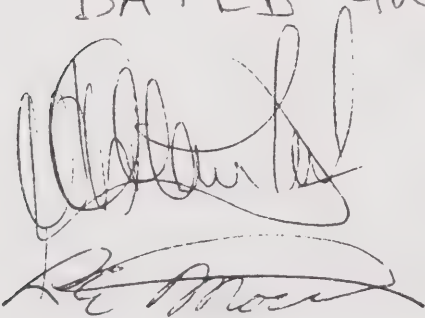
Respondent.

The parties agree to the following terms as full and final settlement of the above-noted complaint:

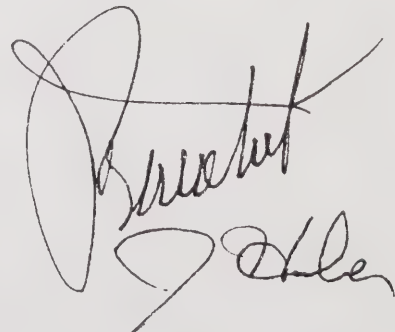
1. The Employer acknowledges that it has been tardy with respect to the Memorandum of Settlement dated June 2, 1992.
2. The Employer agrees that by September 1, 1994 it will be performing PPR's in a timely manner and in accordance with existing Ministry policies and procedures (e.g. Ontario Manual of Administration and Appendix "A", Handout 4 of the M.C.S. Human Resources Staff Training and Development Outline) at Elgin-Middlesex Detention Centre (EMDC).
3. The present joint committee ^{at EMDC} will meet quarterly between now and September 1, 1994 to monitor progress.

4. The issue of cafeteria service will be placed on the agenda for the next ERC meeting following September 30, 1993 and in any event a meeting will be held by November 30, 1993. management agrees to consider suggestions to improve cafeteria service at Elgin - middlesex Detention Centre within the resources available from the institution.
5. The complaint is withdrawn.
6. The parties agree that this memorandum of settlement shall be made an order of the Tribunal.

DATED this 28th day of September, 1993.



FOR UNION



FOR EMPLOYER

